

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

)  
Public Hearings to Determine )  
Whether to Adopt Cease and Desist )  
Orders against: )  
)  
Mark and Valla Dunkel, Middle River )  
in San Joaquin County; )  
)  
Yong Pak and Sun Young (Pak/Young), )  
Duck Slough in San Joaquin County; )  
)  
Rudy Mussi, Toni Mussi and Lory C. )  
Mussi Investment LP (Mussi et al.), )  
Middle River in San Joaquin County )  
~~~~~ )

JOE SERNA JR./CALEPA BUILDING

1001 I STREET

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

VOLUME III

FRIDAY, JULY 9, 2010

9:08 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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1 P R O C E E D I N G S

2 --o0o--

3 CO-HEARING OFFICER BAGGETT: Good morning.

4 We're here today to continue the Yong Pak and Sun Young  
5 CDO hearing and possibly begin the Rudy Mussi, et al  
6 Investment LP CDO hearing.

7 I'm Art Baggett, Member of the Board, here with  
8 my Co-Hearing Officer, Chair Charlie Hoppin.

9 Also we're assisted by staff counsel Dana  
10 Heinrich and staff engineer Ernie Mona.

11 The Pak Young CDO hearing began on May 5th,  
12 2010 and was continued to the 9th of June, and we are  
13 continuing in accordance with the Notice dated June 17,  
14 2010.

15 As the June 17th Notice indicated, additional  
16 hearing dates of 15th and 16th have been set aside. We  
17 also could continue it next Tuesday and maybe not have  
18 to come back on a Friday. Does next Tuesday work for  
19 the parties?

20 MR. O'LAUGHLIN: Yes.

21 CO-HEARING OFFICER BAGGETT: In lieu of -- or  
22 we might need Tuesday, Thursday, and Friday. I don't  
23 know. Any comments? Mr. Herrick what do you --

24 The hearing room just opened up. Unfortunately  
25 we don't control our hearing rooms here. We have to get

1 in a queue. And one just opened up which we wish we  
2 would have known about a while ago.

3 MR. ROSE: For what it's worth, I have a  
4 conflict on Tuesday.

5 CO-HEARING OFFICER BAGGETT: You have a  
6 conflict on Tuesday.

7 MR. HERRICK: Mr. Chairman, if I might. I  
8 believe today, next Thursday, and Friday are sufficient  
9 time to complete these hearings. Tuesday does not work  
10 for us.

11 CO-HEARING OFFICER BAGGETT: Okay.

12 MR. HERRICK: I would like to clarify that I  
13 believe the only thing remaining in the Mussi and Pak  
14 and Young hearings on our side is cross-examination of  
15 Mr. Neudeck, so we don't have any -- there's nothing  
16 else that goes on for Mussi.

17 CO-HEARING OFFICER BAGGETT: Okay. Very good.

18 MR. HERRICK: Except for continuation of the  
19 cross -- well, rebuttal. But I mean the case-in-chief.

20 CO-HEARING OFFICER BAGGETT: Two parties can't  
21 make it. That answers it.

22 MR. HERRICK: I understood from your initial  
23 statement that we were finishing Pak/Young then starting  
24 Mussi. I just wanted to clarify that we'd gone through  
25 most of both.

1 CO-HEARING OFFICER BAGGETT: I understand.  
2 There's very little on Mussi. So we will just continue  
3 Thursday and Friday then.

4 Thank you all. Everybody has been here before  
5 and you know the evacuation procedure.

6 MR. O'LAUGHLIN: Yes.

7 CO-HEARING OFFICER BAGGETT: Down the doors,  
8 across, out in the park.

9 This hearing is webcast to the public, as you  
10 all know. It's recorded on audio and video. And we  
11 have a court reporter, and if you want a copy make your  
12 own arrangements with the court reporter for a  
13 transcript.

14 During the May 5th and 9th hearing dates, we  
15 completed the Prosecution Team case-in-chief, began the  
16 case-in-chief of Pak/Young, heard the direct testimony  
17 from all the witnesses in Pak/Young, and conducted the  
18 cross-examination of all the witnesses for Pak/Young  
19 except for Christopher Neudeck.

20 With the exception of Gino Celli who testified  
21 only for Pak/Young and hearing all the witnesses for  
22 Pak/Young testified for both Mussi and Pak/Young  
23 hearings.

24 So with that, we're up for cross-examination of  
25 Mr. Neudeck.

1           MR. O'LAUGHLIN: Mr. Baggett, I was working  
2 over the weekend on this. And fortunately for you  
3 folks, you didn't have to sit through it in the Woods  
4 Irrigation proceedings. Mr. Neudeck's testimony which  
5 is in the Pak and Young --

6           CO-HEARING OFFICER BAGGETT: Can you up the  
7 volume or get closer?

8           MR. O'LAUGHLIN: Is that better?

9           CO-HEARING OFFICER BAGGETT: Yes.

10          MR. O'LAUGHLIN: I'll just have to chew on the  
11 mic. Sorry about that.

12          So going through the testimony, we spent about  
13 three-plus hours on cross-examining Mr. Neudeck in the  
14 Woods Irrigation Company matter, and actually his  
15 testimony in this matter, the Mussi-Pak-Young matter, is  
16 an exhibit in the Woods Irrigation Company proceedings.

17          I'm happy with the cross-examination that we  
18 did in that matter just being transferred into this  
19 matter and not taking the three-plus hours to do  
20 cross-examination of Mr. Neudeck because, really, I have  
21 no additional questions to ask Mr. Neudeck other than  
22 the ones that I've already previously asked.

23          And I don't know if you want the redundancy of  
24 that. We can talk about that, but, you know, at some  
25 point in time -- and I can glean, I'm guessing or

1 summarizing or whatever, but you have a closed session  
2 coming up next week, and I'm assuming that in part your  
3 closed session is some type of concept or idea of  
4 coordination, consolidation, use a term; I don't know  
5 what term you want between these two proceedings.

6 And the same goes for Mr. -- one other thing  
7 real quick.

8 Mr. Wee's rebuttal testimony which took place  
9 in Woods Irrigation Company was about three-plus hours  
10 plus -- or a little bit longer with cross-examination.  
11 And almost entirely all of Wee's testimony except for  
12 some supplemental exhibits that go directly to Mussi or  
13 Pak/Young was all dealt with in Woods as well.

14 So I don't know if we need to be redundant or  
15 not. If you want to be, I'm happy to be redundant.

16 MR. RUBIN: Hearing Officer Baggett, the San  
17 Luis & Delta-Mendota Water Authority supports the  
18 approach Mr. O'Laughlin just laid out.

19 I would add one additional point, and that is  
20 potential for ambiguity in the record by having to  
21 cross-examine on the same testimony.

22 If you're asking similar questions, maybe not  
23 the same questions, there's the potential where you may  
24 get an answer that's slightly different. And although  
25 I'm not suggesting that the witness would be providing a

1 different answer, but the question may be presented  
2 slightly different that may result in a different  
3 answer, and it could just frankly I think muddle up or  
4 make more unclear the record.

5           The approach Mr. O'Laughlin suggests, I think,  
6 not only saves time but provides for a record that's  
7 consistent.

8           CO-HEARING OFFICER BAGGETT: So you're  
9 proposing we take notice of that cross-examination of  
10 that direct testimony and transpose it into this  
11 proceeding.

12           MR. O'LAUGHLIN: The burden, unfortunately, for  
13 you folks would be on you because you would have to read  
14 the reporter's transcript.

15           But I'm going to assume that you're going to  
16 read the reporter's transcript and listen to it as well,  
17 so whether you hear it -- I don't know if you want to  
18 hear it fresh, or do you want to read the reporter's  
19 transcripts or you want to do both.

20           I have no other questions to ask Mr. Neudeck.

21           CO-HEARING OFFICER BAGGETT: Okay. Prosecution  
22 Team?

23           MR. ROSE: I don't have a problem with moving  
24 in any direct testimony, but we didn't cross-examine  
25 Mr. Neudeck or Mr. Wee in the same way that we intend to

1 for these proceedings because there are different  
2 issues.

3 So I certainly -- if the direct is brought in  
4 from one to the other, I don't have a problem with that;  
5 but I certainly wouldn't waive any right to  
6 cross-examine.

7 MR. O'LAUGHLIN: No, and I'm fine with that.  
8 I'm just saying from my perspective.

9 CO-HEARING OFFICER BAGGETT: From your  
10 perspective.

11 MR. O'LAUGHLIN: My perspective, right.

12 CO-HEARING OFFICER BAGGETT: You would waive  
13 the --

14 MR. O'LAUGHLIN: And if the Prosecution Team  
15 has cross-examination questions and there's little  
16 tidbits here and there, but on the whole I don't need to  
17 take up three hours plus of your time doing  
18 cross-examination that's already been thoroughly vetted,  
19 and I'm sure Mr. Mona probably doesn't want to hear it  
20 again.

21 CO-HEARING OFFICER BAGGETT: Any other parties?

22 MR. HERRICK: Mr. Chairman, this is getting  
23 very confused.

24 I believe it was two weeks ago in the other  
25 hearing Mr. O'Laughlin said that his office would

1 produce some sort of proposal for a stipulation so that  
2 we could consider what parts of what hearing might be  
3 recognized.

4 We haven't received anything yet. And that's  
5 not a slight on him; we just haven't received that.

6 And we show up today after having prepared  
7 witnesses and scheduled out hearings today, next  
8 Thursday, and Friday, and now we're not going to go  
9 through it, and so we'll reach about an hour from now,  
10 and the people on the opposing side of the aisle say,  
11 well, Mr. Herrick's not ready for his rebuttal. Too  
12 bad. We have to expedite these proceedings. Let's go  
13 forward.

14 So I think we're just -- we're trying to  
15 expedite this rather than go through the steps we have  
16 to go through.

17 There's no deadline to resolve this. I would  
18 think the inclination of the Board would be to listen to  
19 live testimony and cross-examination rather than four  
20 hours of video or text which, no offense to anyone,  
21 would probably not be diligently reviewed.

22 And so I think we're embarking down the path of  
23 making sure we go as fast as possible rather than  
24 complete as possible. And I would object to not doing  
25 the cross-examination that we all planned on. That's

1 why I'm here today.

2 And I'm not ready to put on rebuttal cases  
3 today, given that we scheduled three days to finish this  
4 hearing, and today was supposed to be two or three hours  
5 on each case for Mr. Neudeck.

6 CO-HEARING OFFICER BAGGETT: As I understand  
7 the proposal, it's not -- we will continue -- we won't  
8 do rebuttal today. I'll take that off the table. That  
9 will be continued to next Thursday.

10 MR. O'LAUGHLIN: My witnesses -- all I'm  
11 saying -- and Mr. Herrick's correct. I owe a  
12 stipulation. It's drafted. It's on my secretary's  
13 desk. It will go out today.

14 It's a very simple stipulation that basically  
15 says that for X parties, if you want to take exhibits  
16 from one case and put it into the other, then you just  
17 lay it down the line of what those exhibits are and what  
18 the new numbers would be in the new case, in the case  
19 that you're putting it into.

20 So that's going out, and I'm sorry I haven't  
21 gotten it to you sooner.

22 I understand Mr. Herrick. I don't want him to  
23 get caught. I'm not going to ask for rebuttal  
24 witnesses. My rebuttal witnesses aren't available until  
25 next Thursday either.

1           But -- and Mr. Wee will be here any minute, and  
2 we can start with Mr. Wee. Oh, he's here.

3           So we can have a productive day. I'm not  
4 trying to sandbag anybody.

5           I'm just saying that from my perspective on our  
6 side of the aisle, you know, I don't need to do  
7 cross-examination if the Board's happy with just taking  
8 the previous cross-examination that we did and --

9           CO-HEARING OFFICER BAGGETT: I understand.  
10 That's what I want to make sure that we all are  
11 talking -- he's not asking any other party to waive  
12 their right to cross.

13           He's just asking that, to save time, he would  
14 enter -- if everybody would agree -- he would enter your  
15 cross from the previous hearing into this.

16           MR. RUBIN: Mr. Baggett, the San Luis &  
17 Delta-Mendota Water Authority support this proposal  
18 because the testimony that was submitted in the Woods  
19 matter is identical. There's an -- they attached as an  
20 exhibit the testimony that was submitted in this matter.

21           So we've gone through that testimony, the  
22 Neudeck testimony in this matter, in the Woods case,  
23 cross-examined, and I agree with the way you just  
24 characterized it.

25           It's not requiring anybody to waive their right

1 to cross-examine. It's bringing that testimony in here,  
2 the cross-examination, into this proceeding to try to  
3 expedite the process and, probably more importantly,  
4 save time and resources.

5 CO-HEARING OFFICER BAGGETT: And likewise, the  
6 case-in-chief, you would just submit it. We've got a  
7 case-in-chief right here. You don't need an oral  
8 cases-in-chief. That's your option, as always, to  
9 summarize or not summarize or submit the written.

10 Anyone else have any comments?

11 MS. GILLICK: Hearing Officer Baggett, I would  
12 just express a concern by the Hearing Officers and the  
13 decision-makers.

14 The evidence presented by Mr. Neudeck, I  
15 believe, is being questioned and challenged by the MSS  
16 parties. And one of the roles of the Hearing Officers  
17 in assessing the credibility of a witness is assessing  
18 that credibility based upon the testimony and the  
19 veracity and the demeanor of the witness during that.

20 So I just would express that reviewing a  
21 transcript on behalf of the Hearing Officers and the  
22 decision-makers does not allow them the ability to fully  
23 assess the demeanor and credibility of the witness which  
24 is one of the important parts of cross-examination or  
25 testimony of a witness.

1 CO-HEARING OFFICER BAGGETT: No, I --

2 MS. GILLICK: So I just express that concern.

3 CO-HEARING OFFICER BAGGETT: I appreciate that.

4 But he's not asking -- you can ask all the  
5 cross you want, my understanding. He's waiving -- if  
6 Mr. O'Laughlin wants to waive his right to cross, no one  
7 has -- you can't make him do a cross-examination. No  
8 other party can require him to cross-examine a witness  
9 or to have his witness put on any testimony other than  
10 what's submitted.

11 I mean you can't -- he's not asking you to  
12 waive your right to cross.

13 MS. GILLICK: No, but he is ask asking that the  
14 cross from the former proceeding be brought into this  
15 proceeding.

16 And I believe there's some evidentiary issues  
17 associated with that because of the inability to assess  
18 the delivery, the demeanor, and the veracity of that  
19 witness when they are subsequently -- I imagine; maybe  
20 not -- going to attack the validity of what is being  
21 said.

22 So the Hearing Officer does not not enjoy that  
23 sense of --

24 CO-HEARING OFFICER BAGGETT: I appreciate that.

25 MS. GILLICK: -- weighing the credibility of

1 the testimony and the --

2 MR. O'LAUGHLIN: But --

3 MS. GILLICK: -- testimony of the witness.

4 CO-HEARING OFFICER BAGGETT: One at a time,  
5 please.

6 MR. O'LAUGHLIN: I would agree, and I don't  
7 disagree with what was just said.

8 But -- and there's going to be plenty of  
9 questions by other people. That's great.

10 All I'm saying is that the testimony that  
11 Mr. Neudeck put in in this matter is exactly the same  
12 testimony he put in Woods.

13 It's exactly -- the page cites and everything.  
14 I went through this for three hours or two hours plus  
15 with him, and then Jon had about an hour plus more with  
16 him. It's exactly the same.

17 And I'm not -- all I just -- I'm happy to go  
18 through it. I mean. But if it's exactly the same, and  
19 it's the same testimony, we've done it. I got what I  
20 wanted. I don't need anything else.

21 And if other people want to make other points  
22 about Mr. Neudeck and what he's done or hasn't done,  
23 great. Go ahead and do it.

24 MR. RUBIN: Hearing Officer Baggett, one  
25 additional point.

1           The process -- I disagree with Ms. Gillick's  
2 statement to some degree. The State Water Resources  
3 Control Board as a whole will be deciding these matters.  
4 The process allows for a Hearing Officer to hear  
5 testimony, and other members that are not part of the  
6 Hearing Team ultimately need to review the record,  
7 decide matter.

8           There is no real difference in this process as  
9 the way I see it.

10           Again, I want to reiterate the issue that I  
11 raised earlier that the potential exists for the Hearing  
12 Officers in the Woods matter to make a ruling or make a  
13 judgment and issue a decision that potentially conflicts  
14 with a decision that the Hearing Officers in this matter  
15 may make.

16           Again, I think it will provide a much cleaner  
17 process by having -- at least incorporate the  
18 cross-examination that Mr. O'Laughlin and I did into  
19 this matter to save time as well as provide a clear  
20 record.

21           CO-HEARING OFFICER BAGGETT: Mr. Herrick.

22           MR. HERRICK: Mr. Chairman, you know, I need to  
23 say that this doesn't have anything to expediting or  
24 clean records.

25           I think the bottom line is the opposing counsel

1 have made motions to strike substantial portions of  
2 Mr. Neudeck's testimony. And before that's even been  
3 ruled on by the other Hearing Officer, we're  
4 contemplating accepting everything in this hearing that  
5 was objected to in the other one?

6 This doesn't have anything to do with saving  
7 time. The bottom line is that evidence in the other  
8 hearing is presented, and nobody wants to ask  
9 Mr. Neudeck questions in this hearing now that he knows  
10 the contrary evidence.

11 It doesn't have anything to do with ease or  
12 expedition or saving people time. There is a structural  
13 problem here with those motions to strike all that  
14 testimony.

15 MR. O'LAUGHLIN: Yeah, but --

16 CO-HEARING OFFICER BAGGETT: Let's just --

17 MR. O'LAUGHLIN: Okay.

18 CO-HEARING OFFICER BAGGETT: -- proceed and use  
19 your discretion, whatever you want on your cross, short,  
20 long.

21 I think it is correct that the entire Board  
22 does vote on these orders, and three of our colleagues  
23 are not sitting here, and they will vote.

24 And as some of you may recall, at least on my  
25 tenure on this Board, there's been at least two orders I

1 know of that were not unanimously voted on by this  
2 Board, and they were voted against by people that  
3 weren't even part of the hearing, by my colleagues who  
4 weren't in the hearing that some of us conducted.

5           So I think you don't have to watch the witness.  
6 Three of our members don't see the witness, don't  
7 understand -- I would concur that it's helpful to see  
8 the demeanor and how a witness responds in person, but  
9 the way this Board has been set up since it was first  
10 created, that's not the way.

11           We aren't a court in that fashion, which I find  
12 frustrating at times also because I think there is  
13 something to actually being in the hearing room and  
14 watching witnesses perform.

15           With that, let's continue cross-examination.  
16 We are on cross-examination of Mr. Neudeck.

17           MR. ROSE: Briefly before I begin, do I  
18 understand correctly that we should pursue  
19 cross-examination of Mr. Neudeck on Pak and Young and  
20 Mussi separately? At least because there are  
21 differences in exhibit numbers and some testimony.

22           CO-HEARING OFFICER BAGGETT: That's how we've  
23 been conducting this proceeding so far.

24           MR. ROSE: That's fine. I just wanted to  
25 clarify.

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CHRISTOPHER H. NEUDECK

Previously called by YONG PAK AND SUN YOUNG

CROSS-EXAMINATION BY MR. ROSE

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MR. ROSE: Good morning, Mr. Neudeck. David Rose for the Prosecution Team. How are you today?

MR. NEUDECK: Just fine.

MR. ROSE: So as we begin, I believe you have your testimony in front of you for the Pak and Young matter; is that correct?

MR. NEUDECK: Yes, I do.

MR. ROSE: Okay. First of all, I'll point you to page 4 of your testimony which is labeled Exhibit 3 for the Pak and Young matter.

In the third full paragraph from the top, you say that Duck Slough -- I want to just be clear -- are you saying that Duck Slough was improved to 30 feet wide by 7 feet deep where it abuts the parcel, the Pak and Young parcel?

MR. NEUDECK: Are you referring to the paragraph that begins with Exhibit 3N?

MR. ROSE: Third paragraph from the top: From this I conclude. Page 4 of your Pak and Young testimony.

1           MR. NEUDECK: Okay. I apologize. I must have  
2 had an earlier version in front of me. Okay.

3           So paragraph beginning: From this I conclude.

4           MR. ROSE: Yes.

5           MR. NEUDECK: Could you repeat the question? I  
6 apologize for the confusion.

7           MR. ROSE: No problem. I want to be on the  
8 same page as you.

9           MR. NEUDECK: Thank you.

10          MR. ROSE: Do I understand correctly that you  
11 are suggesting that what we're referring to as Duck  
12 Slough was improved to 30 feet wide by 7 feet deep where  
13 it abuts the Pak and Young parcel?

14          MR. NEUDECK: No. That is not what I testified  
15 to. What I testified to was that the Samson dredge was  
16 improving to that depth where the Samson dredge worked.  
17 There was no conclusive evidence as to how far upstream  
18 or in a southerly direction the Samson dredge traveled  
19 from Burns Cutoff.

20          So no, it was not my testimony that that was  
21 the dimension at the Pak and Young parcel.

22          MR. ROSE: Okay. Thank you. I just wanted to  
23 make sure I understood.

24          MR. NEUDECK: You're welcome.

25          MR. ROSE: Let's turn to page 6 of your

1 testimony. Exhibit 3R you have labeled as a map of  
2 California Delta, a 1921 map.

3 MR. NEUDECK: Yes.

4 MR. ROSE: Mr. Lindsay, if you could put  
5 Exhibit 3R up, please.

6 MR. NEUDECK: It's Weathers Petzinger map,  
7 California Delta. That's not the correct map.

8 MR. HERRICK: It's been a while, but as I  
9 recall one exhibit was left out, and then in  
10 Mr. Neudeck's direct he provided that exhibit.

11 MR. ROSE: Okay. My mistake if I asked you to  
12 pull up something, Mr. Lindsay, that isn't there.

13 But we are talking about a 1921 map; is that  
14 correct?

15 MR. NEUDECK: That's correct.

16 MR. ROSE: Great.

17 MR. NEUDECK: And I apologize. I'll leave the  
18 exhibit numbers up to you because I'm as well confused.

19 MR. ROSE: I believe I have it at 3R, but if  
20 I'm corrected as to that, so be it.

21 In your testimony you refer to it as 3R?

22 MR. NEUDECK: Yeah, I show it being corrected  
23 to 3S, but that -- it was confusing testimony at the  
24 time, so.

25 MR. ROSE: Okay.

1 MR. NEUDECK: But the date of the map and the  
2 map, we're referring to the same map.

3 MR. ROSE: Map of California Delta, the  
4 Sacramento and San Joaquin Rivers, Captain Weathers and  
5 Captain Petzinger, dated 1921.

6 MR. NEUDECK: Correct.

7 MR. ROSE: That's what we're referring to.  
8 Thank you.

9 MR. NEUDECK: Great.

10 MR. ROSE: Now do you have this map in front of  
11 you?

12 MR. NEUDECK: Yes, I do.

13 MR. ROSE: This exhibit shows a slough in the  
14 general vicinity of the Pocket Area we're talking about;  
15 is that correct?

16 MR. NEUDECK: That is correct.

17 MR. ROSE: Now this slough or waterway, it  
18 doesn't abut the parcel in question here, does it?

19 MR. NEUDECK: No. It's southwest of the  
20 parcel.

21 MR. ROSE: And this map doesn't show any  
22 canals, ditches, or other sloughs abutting the parcel,  
23 does it?

24 MR. NEUDECK: No. I think the purpose of this  
25 map -- this was a map prepared by what -- if you read

1 river pilots, they were captains. And it was to  
2 demonstrate, I think, more for the purpose of  
3 navigation.

4 So the map was -- that was the intended purpose  
5 of it. It was a navigation-type map. So I wouldn't  
6 imagine that they would be mapping internal canals and  
7 irrigation systems and so forth.

8 MR. ROSE: No, I certainly understand that  
9 there's a specific purpose to that map upon its  
10 creation.

11 But it doesn't show any other sloughs, canals,  
12 or ditches abutting the parcel, does it?

13 MR. NEUDECK: No, it does not.

14 MR. ROSE: Okay. Thank you.

15 MR. NEUDECK: You're welcome.

16 CHIEF LINDSAY: Have we clarified then the  
17 exhibit number on this? I'm showing this as 3Q.

18 MS. GILLICK: Hearing Officer Baggett, I  
19 believe it was submitted and labelled initially as 3Q,  
20 and during the direct testimony of Mr. Neudeck it was  
21 corrected that it should be 3R. But it was originally  
22 submitted and labeled as 3Q.

23 MR. ROSE: Yeah, I had it in his testimony as  
24 3R, and I know that we --

25 CO-HEARING OFFICER BAGGETT: That's correct, as

1 I recollect. Maybe in the future -- next year we should  
2 just reserve all the hearing rooms for every single day  
3 so we don't have these gaps. Reserve this for every day  
4 next year.

5 It is frustrating.

6 MR. ROSE: That would be fun.

7 Mr. Neudeck, turning briefly to page 7 of your  
8 testimony -- let me find the correct paragraph here.

9 The second full paragraph from the top. You say:

10 We know that the Kingston School Slough  
11 existed through at least 1941.

12 I think maybe we should bring up, Mr. Lindsay,  
13 the first map you just had which was the 1941 map. I  
14 believe that one is 3S. You had it up a minute ago.  
15 Thank you. That's the one.

16 So Mr. Neudeck, where on the 1941 map of Woods  
17 is there labelled a canal, slough, or irrigation ditch  
18 connecting the slough to the west of the Pocket Area to  
19 the irrigation ditch following the High Ridge Levee?

20 MR. NEUDECK: The -- what I was referring to  
21 was this area in here and making this the point of  
22 connection between these two areas. This is the  
23 Kingston School site, and I made reference that this is  
24 where the connection was made.

25 MR. ROSE: Is there a connection, a water

1 connection, labeled on that map?

2 MR. NEUDECK: No, there is not.

3 MR. ROSE: So when you say we know that the  
4 Kingston School Slough existed through at least 1941,  
5 you are referring to that little jog of a slough that  
6 existed on the 1921 map? That was the Kingston School  
7 Slough?

8 MR. NEUDECK: That was one of the references.  
9 The other reference was the 1913 Denny's map. And I --  
10 I'm not sure what the exhibit number is. I apologize.  
11 I have it as 3T, but that may be incorrect. Is that  
12 correct?

13 The 3T Denny's map, which is 1913. And I --  
14 and that's what I was referring back to. But I do  
15 not -- there is no direct terminology on this map  
16 showing that direct connection, but I do show that  
17 historically there was a connection point there.

18 MR. ROSE: Okay. I'll get to that in a second.

19 So briefly, just for my own edification, when  
20 you were referring to the Kingston School Slough, are  
21 you referring to that slough labeled slough on this 1941  
22 map to the west of the Pocket Area?

23 MR. NEUDECK: Well, I'm more or less referring  
24 to this area in here. This is the Kingston School site  
25 right here. Right under my highlighter.

1 MR. ROSE: I understand that.

2 The Kingston School Slough: What body or  
3 feature are you referring to as the slough?

4 MR. NEUDECK: Well, in general, it would be  
5 this whole entire body of water here in reference to a  
6 source of water providing -- another source water  
7 providing a connection into Duck Slough and into this --  
8 into this region.

9 MR. ROSE: So when you say the Kingston School  
10 Slough existed through at least 1941, how do you draw  
11 that conclusion when there is no connection heading  
12 east/west off of the slough on the 1941 map?

13 MR. NEUDECK: Well, I am referring to part of  
14 this as well.

15 So -- and maybe I've taken some license in  
16 making that statement because it doesn't directly refer  
17 to that across this point here, but I was referring to  
18 this piece as well.

19 MR. ROSE: Okay. So would it be correct to say  
20 that the north/south part of what you called Kingston  
21 School Slough is what you're definitively saying does  
22 exist in 1941?

23 MR. NEUDECK: On this map, that's correct.

24 MR. ROSE: But you're not saying that any  
25 east/west jog definitely exists in 1941?

1           MR. NEUDECK: Well, there is one other map that  
2 supports that. And let me -- it's the 1976 DWR Areal  
3 Geology map that as well shows a similar connection. I  
4 have that as 3U. And it's 3T there. I apologize for  
5 the confusion on these exhibits.

6           But if you look ... got to find it myself.

7           This area right here.

8           MR. ROSE: So you're pointing to the Pocket  
9 Area again.

10          MR. NEUDECK: Right.

11          And there you can see the slough both coming  
12 from the north/south direction as well the east/west  
13 connection point there.

14          So that dates it past 1941. So there is some  
15 conflict with the 1941 map when you look at this 1976  
16 map. But this does further support that concept that  
17 there was a connection between the north/south section  
18 as well as the east/west section tying over to the Duck  
19 Slough area.

20          MR. ROSE: Now I'm unclear from this map  
21 whether this map is showing sloughs or sloughs, canals,  
22 and all sorts of conveyances for water. Maybe you can  
23 clear that up for me.

24          Would you like me to ask you a specific  
25 question about it?

1           MR. NEUDECK:  Actually, the statement you made  
2 I thought was similar in nature.  You said the same  
3 thing.  You're not sure what, but you said the same  
4 thing in both statements.  So yeah, maybe a  
5 clarification.

6           MR. ROSE:  Sure.

7           So is it your contention that this 1976 map --  
8 I suppose we'll call it DWR map -- I have as Exhibit 3T  
9 is showing only sloughs listed as waterways or blue  
10 lines?  Is that your contention?

11          MR. NEUDECK:  Well, I would say that waterways  
12 are shown as blue in general.

13          MR. ROSE:  So --

14          MR. NEUDECK:  I mean sloughs -- yes.  The  
15 answer is yes.

16          MR. ROSE:  So you're suggesting that these  
17 could not be manmade waterways shown on here?

18          MR. NEUDECK:  It's not my contention it's a  
19 manmade waterway.  The purpose of -- the contention of a  
20 slough is that it's a natural body of water.

21          A canal -- the contention of a canal typically  
22 indicates that it was manmade.

23          From my terminology, at least the way I've  
24 expressed it and the way I think about it when I use the  
25 terminology, a slough is more of a natural, you know,

1 dendritic channel that was created, you know, in  
2 history.

3           So I would consider these to be natural.

4           MR. ROSE: So you're saying that this 1976 map  
5 shows in all of these snaky features surrounding the  
6 Pocket Area a natural waterway. That's what you're  
7 suggesting?

8           MR. NEUDECK: Well, I don't want to overstate  
9 this exhibit because there's all sorts of artificial  
10 waterways on this map throughout the Delta.

11           I mean if you look at all these straight  
12 channels between Woodward and Bacon and between Woodward  
13 and Victoria, these straight channels here, these are  
14 dredger cuts. These were not naturally occurring  
15 channels.

16           The sinuosity of Old River and Middle River on  
17 either side of this are natural reservoirs and sloughs.

18           So I don't want to make an overarching  
19 statement to say this map only shows natural sloughs.  
20 There is manmade features on this map as well.

21           What I was showing was that that was a water  
22 feature. And it was shown as late as 1976.

23           It goes to the evidence that we're putting  
24 forth in this case: Here's another map showing another  
25 waterway in the vicinity providing a source of water to

1 this slough.

2 MR. ROSE: I understand that. I'm just trying  
3 to get a little bit more clarity for myself here.

4 Now you're saying that on this 1976 map some of  
5 the straight features, nonmeandering features, are  
6 manmade; is that correct?

7 MR. NEUDECK: That's correct.

8 MR. ROSE: Okay. Now, is this little east/west  
9 jog between the slough that you were just talking about  
10 and what we've been referring to as Duck Slough, that's  
11 a straight feature, correct?

12 MR. NEUDECK: Yes. Following my prior  
13 testimony, that would indicate that that would be a  
14 manmade piece. And it would look to be that would be  
15 maybe manmade because it's so straight.

16 The sinuosity or the -- back up. Maybe that is  
17 not a word.

18 The curvy nature of these lines tends to follow  
19 the natural meanders. When you do see the straight  
20 features, that was typically done by man, by dredge, by  
21 dredger cut. So yeah. I would -- by virtue of that, I  
22 would say that would likely be a manmade feature there.

23 MR. ROSE: Okay. Thank you. I was just trying  
24 to get an understanding here.

25 Now if we could go back to the 1941 map briefly

1 which -- that's Exhibit 3R. Thank you.

2           Once again, just to make sure that the record  
3 is clear since we jumped over to the 1976 map, there is  
4 no canal, slough, or other feature, water feature,  
5 connecting the slough to the west of the Pocket Area and  
6 what we've been referring to as Duck Slough on this map,  
7 is there?

8           MR. NEUDECK: There doesn't appear to be. I  
9 mean there's a dark boundary line there, and it does not  
10 demonstrate a slough at that point or waterway.

11           MR. ROSE: So on page 7 of your testimony when  
12 you say we know the Kingston School slough existed  
13 through at least 1941, would it be correct to say that  
14 it's the north/south portion of that slough to the west  
15 of the Pocket that you're saying existed through at  
16 least 1941?

17           MR. NEUDECK: I think based off this map you  
18 could probably draw that conclusion, but.

19           MR. ROSE: And I don't want to interrupt you,  
20 but --

21           MR. NEUDECK: I'll stop at that.

22           MR. ROSE: -- I'm not asking you what existed  
23 in 1976 at this point.

24           I'm just asking for clarification on your  
25 testimony that the Kingston School Slough existed

1 through at least 1941. You're referring to north/south  
2 feature, the --

3 MR. NEUDECK: On this map.

4 MR. ROSE: Okay. Thank you. Because this is  
5 1941, and you don't have anything else from 1941 that  
6 would support your contention in your testimony, do you?

7 MR. NEUDECK: No, I do not.

8 MR. ROSE: Okay. Staying on this same map,  
9 where does the irrigation ditch shown following High  
10 Ridge Levee end on this map?

11 MR. HERRICK: Could counsel point out to what  
12 he's referring? What language on the map?

13 MR. NEUDECK: Yeah, that's -- I'm not following  
14 the question. That's a pretty broad question.

15 MR. ROSE: No problem. And if it's helpful to  
16 you, I have a mildly clear copy that I earlier presented  
17 as PT-14 and a blown-up version of this area and the  
18 legend on PT-15. I can show you those if you need them.

19 But we have labeled High Ridge Levee --  
20 actually we have labeled High Ridge Levee and Inland  
21 Drive following the Pocket Area and going from Middle  
22 River up to that Kingston School area and then following  
23 all the way up to Burns Cutoff.

24 So along that course where does the irrigation  
25 ditch -- and I believe the legend does label some

1 features as irrigation ditch -- where does the  
2 irrigation ditch shown following High Ridge Levee on  
3 this map end?

4           And you can say end or begin. You can tell me  
5 where it goes from and to if that would help.

6           MR. NEUDECK: I'm going to ask you to see those  
7 exhibits since you're referring to exhibits. I'm having  
8 difficulty understanding where you're speaking.

9           MR. ROSE: Again, I believe we established  
10 earlier with some other witnesses, and we can go through  
11 it again if you would like, that these are exactly the  
12 same exhibit as Exhibit 3R posted up on the screen  
13 except clearer copies, and one of them has been blown  
14 up. I did pass out hard copies last time. I don't have  
15 more this time.

16           MR. NEUDECK: Yeah.

17           This irrigation ditch that you have referenced  
18 on this map is on the -- what would be on the east side  
19 of what is known as High Ridge Levee. As I've testified  
20 earlier, it is the Woods Robinson Vasquez irrigation  
21 ditch.

22           On this map, it shows it running up to the  
23 Kingston School east/west line.

24           I believe that's the location that currently is  
25 where it switches over to the west side. This map does

1 not reflect that, but for purposes of clarifying your  
2 question, the irrigation line extends from Middle River  
3 up to the Kingston School east/west line on the east  
4 side of the High Ridge Levee.

5 MR. ROSE: Thank you. And it doesn't extend  
6 any further to the north from that Kingston School  
7 east/west line, does it?

8 MR. NEUDECK: Not to this map.

9 MR. ROSE: And it doesn't extend east or west  
10 from that endpoint of the Kingston School line, does it,  
11 on this map?

12 MR. NEUDECK: Not on this map. It does  
13 currently, but not on this map.

14 MR. ROSE: Right. Thank you.

15 I'd like to turn briefly to Exhibit 3T.  
16 Hopefully that's the one that I mean. It's a 1913  
17 Denny's pocket map. I believe 3T is the current  
18 labeling.

19 But if I'm incorrect, we are talking about the  
20 Denny's pocket map --

21 MR. NEUDECK: That's right.

22 MR. ROSE: -- 1913 --

23 MR. NEUDECK: First time we're consistently on  
24 the same.

25 MR. ROSE: Mr. Neudeck, this map is dated 1913;

1 is that correct?

2 MR. NEUDECK: That is correct.

3 MR. ROSE: And it says on the map that it was  
4 compiled from the latest official and private data; is  
5 that correct?

6 MR. NEUDECK: Yes, I believe it does.

7 MR. ROSE: So is it your contention that this  
8 map is showing data collected in 1913?

9 MR. NEUDECK: You know, I don't have a specific  
10 opinion as to that. You know. The map speaks for  
11 itself. I really don't know.

12 I did not do any background research as to the  
13 date of the compiler. The dating of the compiling. The  
14 compiled information, excuse me.

15 MR. ROSE: Okay. I was just trying to get a  
16 sense. Could you assume that the features labeled as  
17 canals on this Denny's pocket map, Exhibit 3T, could be  
18 the same features in the same locations on the 1911 USGS  
19 survey map?

20 MR. NEUDECK: It's my contention that the Duck  
21 Slough alignment is the same, that the Kingston School  
22 Slough, the slough running north/south from Middle River  
23 to the west of the Duck Slough, the Kingston School  
24 connection point, the east/west point, yes, those are  
25 all the same as of 1913 when this map was produced.

1           MR. ROSE: Let me ask that again. I think you  
2 were -- I don't want to say misunderstanding my question  
3 but answering my question as to are the features in the  
4 same place.

5           Are you suggesting that they are the same  
6 features from the 1911 map versus the 1913 map? Or are  
7 you suggesting they are different features?

8           MR. NEUDECK: Okay. Maybe I -- because you  
9 were confused with my answer, maybe I need to have you  
10 go back and reflect on -- I need to reflect on your  
11 original question.

12           I would say they're similar features. That's  
13 been my contention, that the 1911 map and the canals on  
14 this map are similar.

15           MR. ROSE: Okay.

16           MR. NEUDECK: Maybe I didn't understand your  
17 question.

18           MR. ROSE: No, it's entirely possible and  
19 likely I'm being unclear, so let me ask it a different  
20 way. I'll try to point you to your testimony to make it  
21 as simple as possible.

22           Final paragraph on page 7 of your testimony,  
23 you say:

24           Not only do we have numerous sources  
25           showing Duck Slough having water in it

1 well past the date parcel separated off  
2 the main channel, we have it -- we have  
3 water in it at least as of 1911.

4 So first question, just to understand here:  
5 Are you suggesting that everything listed on the 1911  
6 map or at least Duck Slough is in fact a natural slough  
7 at this point?

8 MR. NEUDECK: I'm trying to be -- I'm trying to  
9 listen to your question. Your question was very broad.  
10 You said everything listed on the 1913 quad surveyed in  
11 1911 --

12 MR. ROSE: I'll rephrase that. I --

13 MR. NEUDECK: -- natural.

14 I'm not saying that everything is natural. I  
15 never contended to that. I'm sure there's some features  
16 on here that are not natural.

17 MR. ROSE: Let me be more --

18 MR. NEUDECK: Okay.

19 MR. ROSE: -- specific.

20 (Interruption by the reporter)

21 MR. ROSE: Are you suggesting that Duck Slough  
22 is a natural waterway on the 1911 USGS quad map?

23 MR. NEUDECK: Yes, I am.

24 MR. ROSE: And are you suggesting that on the  
25 map dated 1913 that this feature that shows in the same

1 location as the Duck Slough on the 1911 map is now a  
2 manmade irrigation canal?

3 MR. NEUDECK: No, I'm not contending to that.

4 It's being referred to as a canal, and I said  
5 my contention may be that canals could in fact be  
6 manmade.

7 But this particular canal that's referenced in  
8 the exact same location as Duck Slough is referring to  
9 Duck Slough. It's not happenstance. It's overlaying  
10 the exact same area. It's in the same configuration.  
11 It traveled through the same sections. It's referring  
12 to the natural Duck Slough.

13 Duck Slough in this meandering condition --  
14 started to use that word sinuous again -- is natural.  
15 And in this particular case, it was labelled a canal.

16 MR. ROSE: Okay. I'm just trying to  
17 understand, so I appreciate that clarification.

18 Just so I'm completely certain exactly what  
19 you're saying: You're not saying then, are you, that  
20 between 1911 and whenever the data compiled for the 1913  
21 map was compiled that the natural, as you're contending,  
22 natural Duck Slough was replaced by manmade channels in  
23 that time period, are you?

24 Would you like me to re-ask that or did you  
25 understand it?

1           MR. NEUDECK: Well, I -- I'm pausing for a  
2 moment because I think we're really focusing manmade,  
3 natural, and I'm not -- I know you have a reason for  
4 your line of questioning, but I'm not certain that there  
5 is -- it makes a difference.

6           Because these canals were being improved,  
7 maintained, operated as irrigation facilities. So  
8 there's some manmade nature to everything out there.

9           Once reclamation occurred, the natural sloughs  
10 had intervention by man. So to say that they weren't  
11 manmade is not a fully exclusive process. The natural  
12 nature of it was to show the meander. You know.

13          A man would not meander a slough or meander a  
14 canal. They tended to dig them in a straight direction.  
15 That's the variation in how we're proving what's manmade  
16 versus what's natural.

17          Once the reclamation occurred, there was  
18 intervention of man in all of these irrigation and  
19 drainage facilities.

20          So I don't know -- I don't want to find myself  
21 making a statement here today that indicates man didn't  
22 have any effect on any of the facilities for irrigation  
23 or drainage. They had a lot. They were using these to  
24 irrigate their crops.

25          So there could have been a number of things

1 that were, you know, reconfigured, deepened, widened.

2 We talked about the Samson dredge earlier on  
3 that was a manmade intervention in a natural slough.  
4 They were deepening and widening it.

5 So I guess I'm a little bit confused, and I  
6 don't want to misstate what I think really occurred out  
7 there. So I don't know if I clarified myself by making  
8 that statement or not, but I was trying to.

9 MR. ROSE: I appreciate that. You certainly  
10 helped me understand exactly how I need to ask you the  
11 questions --

12 MR. NEUDECK: Okay.

13 MR. ROSE: -- I want to ask you, and we can  
14 back into this.

15 On the 1941 map -- and we can pull it up if you  
16 need, but I think we've been over this a little bit --  
17 there are features labeled as irrigation ditches. We  
18 just went over that; is that correct?

19 MR. NEUDECK: That's correct.

20 MR. ROSE: Okay. Now those irrigation ditches,  
21 in your understanding, are those in the exact same  
22 physical location as Duck Slough or are they following  
23 the same path?

24 MR. NEUDECK: I'm pausing for a moment because  
25 this is the confusion. I testified to it in the Woods

1 Irrigation Company proceedings where I showed the  
2 location of that irrigation canal relative to the High  
3 Ridge Levee, so I'll try and testify to it without  
4 drawing it.

5 But it was High Ridge Levee, irrigation  
6 ditch -- I apologize. Thank you for the clarification.

7 Looking in a northerly direction, standing on  
8 High Ridge Levee, the irrigation ditch would be to your  
9 right heading in an easterly direction, then that would  
10 be the Duck Slough.

11 So they put the irrigation ditch right on the  
12 slope or the bank of High Ridge Levee. They pumped into  
13 that, and that's caused, you know, the water to flow in  
14 a slightly higher elevation for top irrigation sake.

15 That's the same location that that ditch exists  
16 today. They concrete-lined it sometime in the mid  
17 1920s. It's concrete lined now. I don't imagine the  
18 concrete lining today is the same as it was in the 1920s  
19 but -- it's probably been improved since then.

20 But that ditch was between High Ridge Levee and  
21 Duck Slough.

22 MR. ROSE: I appreciate that. I know that it  
23 is difficult that we have things that you've done in the  
24 Woods hearing that are not necessarily something that  
25 the Hearing Officers have in front of them at this

1 point, so I appreciate that clarification. That's  
2 exactly what I was looking for.

3 Now going back to the 1913 map -- and maybe it  
4 will be easier for you to understand exactly what I'm  
5 asking here, and you can answer you don't know if you  
6 don't know, obviously.

7 Are you suggesting on the map dated 1913 that  
8 those features around the Pocket Area, specifically in  
9 the Duck Slough path, are the manmade irrigation ditches  
10 that we just discussed on the 1941 map that are  
11 concrete-lined?

12 Whether or not they're actually concrete-lined,  
13 are you suggesting that what's shown on that map is  
14 these irrigation ditches? Or that it is what was shown  
15 on the 1911 map that you called Duck Slough?

16 MR. NEUDECK: Well, it's my contention that the  
17 Woods Robinson Vasquez irrigation system did not come in  
18 as early as the 1913s. It was later.

19 So it would be my contention on this 1913  
20 Denny's map that this would be showing Duck Slough.

21 MR. ROSE: Okay. Thank you. I just wanted to  
22 be clear that what you were suggesting was that the 1913  
23 date map was showing the same features, the same type of  
24 features and obviously in the same location, as the 1911  
25 map.

1 MR. NEUDECK: That's correct.

2 MR. ROSE: Okay. Thank you.

3 MR. NEUDECK: And these are all following  
4 parallel alignments. The irrigation ditch for Woods  
5 Robinson Vasquez irrigation system, Duck Slough, and  
6 High Ridge Levee in this vicinity are all parallel to  
7 one another.

8 MR. ROSE: I appreciate that. I understand.  
9 That's why I'm having difficulty asking you the right  
10 questions to make sure we know we're dealing with the  
11 same feature and not a parallel feature.

12 But we talking about 1911 and 1913 being the  
13 same feature in your understanding?

14 MR. NEUDECK: Yes.

15 MR. ROSE: Thank you.

16 Now other than the 1921 map that we previously  
17 discussed -- I believe we have Exhibit 3R -- you don't  
18 have any maps showing canals, sloughs, or irrigation  
19 ditches in which Pocket Area between 19 -- let's say  
20 whenever the data for the 1913 was compiled and 1925, do  
21 you?

22 MR. NEUDECK: So between 1921 and 1925 is the  
23 time frame you're looking for?

24 MR. ROSE: 1911 or possibly 1913, whenever the  
25 data you think for the 1913 map was compiled.

1           You don't have any maps between that date and  
2 1925 other than the 1921 map, do you?

3           MR. HERRICK: To clarify, you mean as part of  
4 this direct testimony?

5           MR. ROSE: Simply do you have any other maps  
6 that show canals, sloughs, or irrigation ditches between  
7 19 let's say 13 and 1925.

8           MR. HERRICK: In the anticipation and  
9 preparation for rebuttal, additional information is  
10 being uncovered, but it's not part of his testimony  
11 submitted two months ago or whatever it was.

12           MR. ROSE: Okay. Then I'll rephrase that  
13 question with that in mind.

14           Do you have -- other than the 1921 map, do you  
15 have any maps showing canals, sloughs, or irrigation  
16 ditches in the Pocket Area between approximately 1913  
17 and 1925 that have been submitted for this hearing or  
18 the Prosecution Team's review prior to the initiation of  
19 this hearing?

20           MR. NEUDECK: The answer is no, and I think the  
21 exhibits speak for themselves.

22           MR. ROSE: Okay.

23           MR. NEUDECK: I'm doing -- yeah. I'm -- that's  
24 my recollection. Yes.

25           MR. ROSE: Thank you.

1 I don't have any further questions for you on  
2 the Pak and Young matter.

3 --o0o--

4 CHRISTOPHER H. NEUDECK

5 Previously called by

6 RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI INVESTMENT LP

7 CROSS-EXAMINATION BY MR. ROSE

8 --o0o--

9 MR. ROSE: My questions are pretty much exactly  
10 the same for the Mussi matter. So I'd be happy to do  
11 them again or to do what Mr. O'Laughlin previously  
12 suggested and simply have my questions and answers apply  
13 to both, if that works for the Hearing Team.

14 CO-HEARING OFFICER BAGGETT: I think that's  
15 fine for us. I don't think there is any objection from  
16 anyone. Okay.

17 MR. ROSE: Thank you.

18 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin. I  
19 think it's clear -- we can state clearly that this  
20 Hearing Team will in fact be involved in decisions on  
21 the other orders, and we'll be discussing -- the entire  
22 Board will be discussing all these orders at some point.

23 So you can temper your cross with that.

24 MR. ROSE: Board Member Baggett, one final word  
25 just to be clear.

1 I believe we generally referred to all of the  
2 exhibits in my cross-examination of Mr. Neudeck by both  
3 their exhibit number and their label. So inasmuch as my  
4 cross-examination would apply to the Mussi matter, there  
5 are different labelings for those exhibits,  
6 exhibit-number-wise.

7 But I believe everything was specified as to  
8 title as well, if that makes a difference for the  
9 record.

10 CO-HEARING OFFICER BAGGETT: We can sort the  
11 record out.

12 MR. ROSE: Thank you. I didn't want to cause  
13 more problems.

14 --o0o--

15 CROSS-EXAMINATION BY MR. O'LAUGHLIN

16 FOR MODESTO IRRIGATION DISTRICT

17 --o0o--

18 MR. O'LAUGHLIN: Good morning, Mr. Neudeck.

19 MR. NEUDECK: Good morning.

20 MR. O'LAUGHLIN: Seems like Groundhog Day  
21 again.

22 Was the testimony that you gave in the Woods  
23 Irrigation Company matter true and correct?

24 MR. NEUDECK: Yes, it was.

25 MR. O'LAUGHLIN: Okay.

1 I would like to move for the record for the  
2 Board to take official notice of the reporter's  
3 transcripts in State Water Resources Control Board  
4 versus Woods Irrigation Company, pages 614 through 679  
5 and 706 through 740, please.

6 CO-HEARING OFFICER BAGGETT: Okay. Any  
7 comments? Objection? Okay. The Board will take those.

8 SENIOR STAFF COUNSEL HEINRICH: Mr. O'Laughlin,  
9 what were those page numbers again?

10 MR. O'LAUGHLIN: 614 through 679 and 706  
11 through 740. That's the cross-examination of  
12 Mr. Neudeck by myself, Mr. Powell, and Mr. Rubin and  
13 recross.

14 So I just have some clean-up questions in  
15 regards to the Pak/Young matter that are specific to  
16 Pak/Young. Okay?

17 Was Mr. Pankey informed not to do a title  
18 search going back to the beginning, or were you -- or  
19 were you informed not to look at title documents prior  
20 to the parcel being patented?

21 MR. NEUDECK: I believe Mr. Pankey was  
22 directed, and therefore the documents that we received  
23 did not provide anything pre-patent. That's my  
24 understanding.

25 MR. O'LAUGHLIN: Okay. Did you inquire as to

1 why you were not to look at any documents prior to the  
2 patenting of the parcel by the State of California?

3 MR. NEUDECK: It was discussed.

4 MR. O'LAUGHLIN: Okay. What was discussed?

5 MR. NEUDECK: We discussed that prior to patent  
6 did not have any bearing on this matter.

7 MR. O'LAUGHLIN: Bearing in what way? What  
8 sense?

9 MR. NEUDECK: Well, that the certificates of  
10 deposit were -- purchase; excuse me -- I apologize. I  
11 need to get back --

12 MR. O'LAUGHLIN: That's a good one.

13 MR. NEUDECK: -- in the swing of things here.  
14 I apologize for the miscommunication there.

15 Certificates of purchase were simply promises  
16 for -- of what the landowner was to do prior to the  
17 ultimate patent, and that they did not have a legal  
18 impact on the water right hearing. It was more a legal  
19 issue. I didn't delve into it beyond that.

20 MR. O'LAUGHLIN: Okay. Thank you.

21 So your title search started -- and review  
22 started at the patent and moved forward, and that's  
23 expressed in pages 1 through 2 of your testimony,  
24 correct?

25 MR. NEUDECK: That is correct.

1           MR. O'LAUGHLIN:  Okay.  In your document you  
2 state that the parcel -- this is on page 2, the third  
3 full paragraph:  The Woods brothers acquired a parcel  
4 south of this which abutted Middle River.

5           Is it your belief that then the Pak/Young  
6 parcel now has a riparian status to Middle River through  
7 the Woods property that was to the south and east?

8           MR. NEUDECK:  That was the contention that was  
9 being made to that statement.

10          MR. O'LAUGHLIN:  Okay.

11          When you looked at the title documents for the  
12 Pak/Young matter, have you identified other than -- have  
13 you identified any call that relates to Duck Slough, any  
14 call at all in any of the title documents?

15          MR. NEUDECK:  I believe very early on there was  
16 calls to Duck Slough.  And I think as time progressed  
17 the Duck Slough call was -- was dropped from the  
18 descriptions.

19          MR. O'LAUGHLIN:  Okay.

20          MR. NEUDECK:  But there was reference early in  
21 the descriptions.

22          MR. O'LAUGHLIN:  Yeah.  In fact, I think  
23 it's -- in your testimony, it seems to assert that on  
24 the 1877 transfer that Mr. Whitney made there was a call  
25 to Duck Slough.

1 MR. NEUDECK: I believe that was the time  
2 frame.

3 MR. O'LAUGHLIN: Okay. Did you try to locate,  
4 based on the call that was made in the 1877 transfer,  
5 where Duck Slough was located based on that call?

6 MR. NEUDECK: I believe we relied upon the  
7 mapping of Duck Slough. I did not do the actual  
8 mapping. My surveyor, Mr. Blake, did the mapping.

9 And I don't have any -- I don't have a good  
10 answer for that.

11 MR. O'LAUGHLIN: Okay.

12 MR. NEUDECK: I'd have to reflect on his  
13 mapping of that parcel.

14 MR. O'LAUGHLIN: (Drawing on exhibit) What  
15 number are we on, Val?

16 MS. KINCAID: Five.

17 MR. O'LAUGHLIN: Mr. Neudeck, I've done a  
18 schematic of -- and I've marked it MSS-5. I've denoted  
19 a triangular parcel which I've called Pak/Young, PY.

20 I've then put in what is called the High Ridge  
21 Levee by HRL.

22 And then I've put in Duck Slough which is to  
23 the south of the High Ridge Levee.

24 When we went through this previously, you  
25 agreed that if Duck Slough was in existence that it ran

1 south of the High Ridge Levee and east to west; is that  
2 correct?

3 MR. NEUDECK: I don't recall the east-to-west  
4 direction. I think you depicted it correctly on this  
5 map as far as the relationship where it's Pak and Young,  
6 High Ridge, and Duck Slough. East-west --

7 MR. O'LAUGHLIN: I just mean -- well, maybe  
8 southeast to southwest.

9 MR. NEUDECK: Okay.

10 MR. O'LAUGHLIN: Where it goes from Middle  
11 River to Burns Cutoff.

12 MR. NEUDECK: That's correct.

13 MR. O'LAUGHLIN: Okay. Sorry.

14 MR. NEUDECK: I just didn't want to misstate --

15 MR. O'LAUGHLIN: Right. Okay.

16 MR. NEUDECK: -- direction.

17 MR. O'LAUGHLIN: I always get confused where  
18 north is.

19 Okay. In the calls that were made in all the  
20 conveyances, were calls made to Duck Slough or were  
21 calls made to the toe of the levee, the High Ridge  
22 Levee?

23 MR. NEUDECK: I believe the original calls were  
24 made to Duck Slough. And I -- and beyond which I think  
25 that was the intent, was to -- that was the dividing

1 line between the parcels. That was the -- a natural  
2 dividing line.

3 But beyond that, I don't have exact  
4 recollection of what the follow-on calls were.

5 MR. O'LAUGHLIN: Would you have any opinion if  
6 the calls were made to the toe of the levee on the north  
7 side of the High Ridge Levee as to whether or not  
8 Pak/Young's parcel was still riparian to Duck Slough?

9 MR. NEUDECK: Well --

10 MR. O'LAUGHLIN: Let me -- you know what? For  
11 clarification purposes, let me make a mark before you  
12 answer the question so it's clear on the record.

13 (Drawing on exhibit)

14 MR. O'LAUGHLIN: I've marked in pink on MSS-5  
15 adjacent to the Pak/Young parcel north of the High Ridge  
16 Levee a pink asterisk.

17 And my question to you is: If the call was to  
18 the toe of the levee on the north side of the High Ridge  
19 Levee, would it still be your opinion that the Pak/Young  
20 parcel was riparian to the Duck Slough watercourse?

21 MR. NEUDECK: You'd have to look through the  
22 chain of title.

23 I think the intent is very clear that this  
24 parcel was riparian to a natural watercourse to Duck  
25 Slough. If you just focus on one call on one

1 description, you may be misled.

2 Surveyors tended to, many cases, follow a  
3 convenient line, a dry line along the top of the levee,  
4 and maybe that was a mistake made by the surveyor  
5 describing the parcel at that particular transaction.

6 So I don't know that I would make an opinion on  
7 one description itself.

8 MR. O'LAUGHLIN: My understanding based on your  
9 testimony is that Mr. Pankey gave you the deeds, and you  
10 are the one who has reviewed the documents and come up  
11 with what is your belief as to a chain of title showing  
12 that this parcel is in fact contiguous to Duck Slough;  
13 is that correct?

14 MR. NEUDECK: That's correct.

15 MR. O'LAUGHLIN: Okay. So in the documents  
16 that you reviewed, you don't know as you sit here today  
17 whether or not the calls were to the toe of the levee or  
18 not, do you?

19 MR. NEUDECK: I indicated that I don't have a  
20 direct recollection.

21 I know that initially they were made to Duck  
22 Slough. There may have been subsequent calls. I did  
23 say that the Duck Slough call was dropped out of some of  
24 the descriptions, was dropped out of the descriptions,  
25 but the initial calls were to Duck Slough.

1 I don't have a direct recollection as to the  
2 follow -- the follow-on calls. There may have been a  
3 call to that point, but I would go back in history and  
4 look at the intent.

5 MR. O'LAUGHLIN: Well, how is it that you gain  
6 intent from a title document when all the title  
7 document's doing is making calls to specific locations  
8 on a piece of land? How do you get intent from that?

9 MR. NEUDECK: Well, as I indicated, the chain  
10 of title, this parcel has been the same parcel and  
11 there's been a number of descriptions. If you go back,  
12 you can look at what the original intent was to call to  
13 that facility. That's my understanding.

14 MR. O'LAUGHLIN: Okay. When were you -- have  
15 you had a chance now to review Mr. Wee's rebuttal  
16 testimony in the Woods Irrigation Company matter?

17 MR. NEUDECK: Yes, I have.

18 MR. O'LAUGHLIN: Okay. Do you have any reason  
19 to disagree with his assertion that Duck Slough's  
20 hydraulic connection to the San Joaquin River was cut in  
21 1875?

22 MR. NEUDECK: I'm going to ask you to clarify  
23 what you mean by cut. I'm not sure I understand your  
24 question.

25 MR. O'LAUGHLIN: Was a levee built across Duck

1 Slough as Duck Slough connected to Burns Cutoff?

2 MR. NEUDECK: I think there's some confusion  
3 there. There's an indication that the levee was being  
4 constructed to protect upper -- the portion of Roberts.  
5 And it's not my opinion that that was clear as to  
6 whether Duck Slough was closed off at that time.

7 MR. O'LAUGHLIN: In that testimony, Mr. Wee had  
8 a newspaper article which depicted that a tide gate had  
9 been installed at the -- at where Duck Slough entered  
10 Burns Cutoff in 1876. Do you disagree that that  
11 happened?

12 MR. HERRICK: I believe the testimony was two  
13 tide gates.

14 MR. O'LAUGHLIN: Okay. Two tide gates.

15 MR. NEUDECK: I don't disagree with what the  
16 article said. And that case, that's 1876, not 1875.

17 MR. O'LAUGHLIN: (Drawing on exhibit)

18 Mr. Neudeck, I've had marked as MSS-6 another  
19 schematic, and what it shows is a blue line running  
20 basically north and south called Burns Cutoff and a  
21 squiggly line called Duck Slough kind of running east  
22 and west.

23 Now, if my understanding is correct of your  
24 previous testimony, the levee that has been constructed  
25 that's called the High Ridge Levee would be -- and I --

1 I'm going to put it up -- would be on the north side of  
2 Duck Slough going into Burns Cutoff, correct?

3 MR. NEUDECK: Yes, that properly restates my  
4 testimony. I don't know that north is the right  
5 direction, but for purposes of this exhibit we'll stick  
6 with that.

7 MR. O'LAUGHLIN: All right. I've had marked in  
8 green a line, and it's marked HRL on MSS-6. It's called  
9 the High Ridge Levee. Do you generally agree with the  
10 schematic location of the High Ridge Levee?

11 MR. NEUDECK: Yes, I do.

12 MR. O'LAUGHLIN: Thank you. Okay. So now --  
13 and this has been confusing. Where -- is there a levee  
14 that was built on the south side of Duck Slough? Or is  
15 there a natural levee in your opinion on the south side  
16 of Duck Slough?

17 MR. NEUDECK: You asked two questions which --  
18 how would you like me to answer those?

19 MR. O'LAUGHLIN: Okay. Let me go first.

20 MR. NEUDECK: Okay.

21 MR. O'LAUGHLIN: Okay. Is there a natural  
22 levee on the south side of Duck Slough?

23 MR. NEUDECK: Yes.

24 MR. O'LAUGHLIN: Okay.

25 THE WITNESS: I testified to that.

1 MR. O'LAUGHLIN: That is correct. Okay.

2 (Drawing on exhibit)

3 MR. O'LAUGHLIN: I put in pink on MMS-6 a  
4 natural levee extending in a -- along Duck Slough on the  
5 south side running basically in an easterly/westerly  
6 direction. Is that a schematic you would agree with,  
7 Mr. Neudeck?

8 MR. NEUDECK: Yes.

9 MR. O'LAUGHLIN: Thank you. Okay.

10 Now what I'm curious about is at the connection  
11 point where Duck Slough enters Burns Cutoff. Is there a  
12 levee that's constructed across the mouth of Duck Slough  
13 running along Burns Cutoff that then connects to the  
14 High Ridge Levee?

15 MR. NEUDECK: Is there? Within time, yes,  
16 there is.

17 MR. O'LAUGHLIN: Okay.

18 MR. NEUDECK: We testified just previously --  
19 or the question -- line of questioning previously was in  
20 1876, a news article was is that Duck Slough was closed  
21 off and the two tide gates were installed that provided  
22 for drainage out of Duck Slough.

23 MR. O'LAUGHLIN: (Drawing on exhibit)

24 Okay. I've depicted in black on MSS-6 a levee  
25 along Burns Cutoff generally running parallel to Burns

1 Cutoff on the westerly side of Burns Cutoff. Would you  
2 agree with that schematic?

3 MR. NEUDECK: Yes.

4 MR. O'LAUGHLIN: And then at some point in time  
5 I'm going to mark -- there were two tide gates installed  
6 at Duck Slough, correct?

7 MR. NEUDECK: Yes.

8 MR. O'LAUGHLIN: Now do you have any reason to  
9 disagree with the newspaper article description of the  
10 tide gates that depicted that the tide gates only  
11 operated in a uni-direction to drain water out from the  
12 island rather than to bring water into the island?

13 MR. NEUDECK: Yes.

14 MR. O'LAUGHLIN: Okay. And your belief is  
15 what?

16 MR. NEUDECK: Thank you for the follow-on  
17 question.

18 MR. O'LAUGHLIN: Not a problem.

19 MR. NEUDECK: Well, this was the time of  
20 reclamation. So it would be anticipated that those  
21 facilities would be placed in there for drainage. You  
22 need a drain to reclaim.

23 It was my -- it's my impression that those  
24 facilities ultimately would also serve as an irrigation  
25 facility as we reflected on in my prior testimony.

1           The fact that they were originally installed to  
2 drain makes perfect sense. It was during the  
3 reclamation portion of this island.

4           They needed to get the water down to get it to  
5 be a farmable condition, and then once they had that  
6 opening they could use it also as an irrigation source.

7           So a lot of my testimony prior in this hearing  
8 as well as in the Woods Irrigation Company indicates  
9 with an opening through a levee that could be gated you  
10 could easily, you know, pass water in either direction.

11           The express purpose in that article was for  
12 drainage. It doesn't surprise me. That was the time  
13 frame they were in the process of reclaiming this  
14 island.

15           They -- we don't have any follow-on articles  
16 that show the changes to when it would have operated as  
17 an irrigation system, but it's just a difference of  
18 operating the gates. You hold the gates open or you  
19 reverse the gates or you put different gates on it.

20           But the express purpose at this time I agree  
21 was in 1876 was for drainage.

22           But I do disagree that you could not -- I mean  
23 that you could have used this as well for irrigation and  
24 likely used it for irrigation. It's below sea level.  
25 It would allow tidal water to back up, and a good source

1 of irrigation water.

2 MR. O'LAUGHLIN: Okay. In your research that  
3 you have done or your associate Mr. Blake has done, have  
4 you run across any document that states that water is  
5 being diverted from Duck Slough for irrigation?

6 MR. NEUDECK: I don't recall an exact -- well,  
7 I don't have any news articles to that extent. It was a  
8 source of water. It's my contention it was used for  
9 irrigation.

10 MR. O'LAUGHLIN: I got that.

11 MR. NEUDECK: Okay.

12 MR. O'LAUGHLIN: I'm asking a very specific  
13 question.

14 MR. NEUDECK: Do I have any articles showing  
15 that? No.

16 MR. O'LAUGHLIN: Okay. Do you have any -- do  
17 you have any historical document showing that in fact  
18 water was diverted from Duck Slough to irrigate crops  
19 along Duck Slough? Any other documents besides the  
20 newspaper article?

21 MR. NEUDECK: No.

22 MR. O'LAUGHLIN: Okay. Now, in regards to this  
23 Duck Slough, how many acres of land do you contend are  
24 served by Duck Slough in regards to irrigation?

25 MR. NEUDECK: I don't contend to an acreage.

1 MR. O'LAUGHLIN: Okay. We went through this  
2 exercise previously but on a different -- in a different  
3 vein. In records to where Pak and Young is located, do  
4 you know how wide Duck Slough was?

5 MR. NEUDECK: Not at the Pak and Young parcel,  
6 no.

7 MR. O'LAUGHLIN: Do you know how deep it was?

8 MR. NEUDECK: No, I do not.

9 MR. O'LAUGHLIN: Do you know what the gradient  
10 was of the channel?

11 MR. NEUDECK: Of Duck Slough at that point, no.

12 MR. O'LAUGHLIN: Okay. Do you know what the  
13 Manning's n of Duck Slough was at that channel?

14 MR. NEUDECK: No, I do not.

15 MR. O'LAUGHLIN: Okay. Do you know what the  
16 head was at that point in the channel?

17 MR. NEUDECK: If it was gravity fed from Middle  
18 River, you could anticipate the head, you know, given  
19 some assumptions.

20 Based off of my -- as we walk through the Woods  
21 Irrigation Company, based off the tidal elevation of  
22 Middle River, you could draw some conclusions what the  
23 potential head would be.

24 So at the Pak/Young property, you could get a  
25 head of about three feet in tide over the Pak/Young

1 parcel provided it was gravity fed from Middle River.

2 MR. O'LAUGHLIN: Well, I am confused about that  
3 as well. My understanding based on your testimony, at  
4 least in the beginning, is that your assertion is that  
5 this parcel was originally riparian to Burns Cutoff and  
6 not to Middle River.

7 MR. NEUDECK: I was saying -- I said if. I  
8 said if it was being fed by Middle River.

9 MR. O'LAUGHLIN: But you don't know if it was  
10 being fed by Middle River?

11 MR. NEUDECK: No, I do not. Not for a fact.

12 MR. O'LAUGHLIN: All right. Let's go back to  
13 Burns Cutoff because you do assert that it is riparian  
14 to Burns Cutoff.

15 The other thing is, how would you know how much  
16 water -- do you know at any time of any date of any year  
17 what the rate or quantity of water was in Duck Slough?

18 THE WITNESS: No, I do not.

19 MR. O'LAUGHLIN: Okay. Now how do you know how  
20 much water was available to Pak/Young for irrigation if  
21 you don't know all the other lands within that drainage  
22 area who are taking -- or that slough area who are  
23 taking riparian water?

24 MR. NEUDECK: The water -- I would say the  
25 water was available. I do not have a consumptive use

1 calculation of all those that were irrigating out of  
2 that facility.

3 MR. O'LAUGHLIN: Okay. Do you know if at any  
4 time from the time that the tide gates were put in at  
5 Duck Slough until such time as -- pick a date; call it  
6 1900 -- if any pumps were installed at -- on Duck Slough  
7 anywhere?

8 MR. NEUDECK: As I testified earlier, the pumps  
9 were certainly available. They were in use during this  
10 time. I do not have any record as to where they were  
11 used. I would certainly assume that they were used to  
12 lift water out as well as put water in, but I do not  
13 have any direct documents to reference those.

14 MR. O'LAUGHLIN: How far is it from Burns  
15 Cutoff to the Pak/Young property?

16 MR. NEUDECK: Three, four miles. I don't have  
17 the exact distance. Say four miles.

18 MR. O'LAUGHLIN: Okay. Would you agree that if  
19 the Pak/Young parcel was to get water from Burns Cutoff  
20 that in fact that the head on Burns Cutoff would have to  
21 be higher than the land surface elevation at the  
22 Pak/Young property if no pumps were installed?

23 MR. NEUDECK: That -- that's natural  
24 hydraulics. Yes, I agree with that statement.

25 MR. O'LAUGHLIN: Okay. Thank you.



1           MR. RUBIN: Mr. Neudeck, Exhibit 3 for the  
2 Mussi matter is your written testimony. I have a  
3 specific question about your testimony that appears on  
4 page 2 and specifically a paragraph that begins  
5 Exhibit 3H which --

6           MR. NEUDECK: Yeah, I see that.

7           MR. RUBIN: You state a belief at the end of  
8 the paragraph that this line, quote:

9                   This line indicates that Duck Slough had  
10                   water in it at the time the assessor  
11                   parcel map was drawn.

12           Do you see that statement?

13           MR. NEUDECK: Yes, I do.

14           MR. RUBIN: This line that you're referring to  
15 is a line that's depicted in an 1876 assessor parcel  
16 map; is that correct?

17           MR. NEUDECK: That's correct.

18           MR. O'LAUGHLIN: And that assessor parcel map  
19 is an exhibit to your written testimony. I believe it's  
20 Exhibit 3I; is that correct?

21           MR. NEUDECK: Yes, it is. Yes, that's correct.

22           MR. RUBIN: And Exhibit 3H is a set of assessor  
23 parcel maps. I understand some are missing, but they  
24 stretch from 1876 through 1919; is that correct?

25           MR. NEUDECK: That is correct.

1           MR. RUBIN: The assessor parcel maps that are  
2 in Exhibit 3H include the 1876 assessor parcel map,  
3 correct?

4           MR. NEUDECK: Yes.

5           MR. RUBIN: Are there any labels -- or excuse  
6 me -- is there a label on any of the assessor parcel  
7 maps that are labeled Exhibit 3H that label a feature  
8 that runs from Burns Cutoff to Middle River as Duck  
9 Slough?

10          MR. NEUDECK: No, I did not see the label Duck  
11 Slough on those maps.

12          MR. RUBIN: Are there any features depicted on  
13 the assessor parcel maps that are marked Exhibit 3H that  
14 label Black Slough?

15          MR. NEUDECK: You know, I -- there may be. I  
16 don't know.

17          MR. RUBIN: Let's --

18          MR. NEUDECK: I -- yeah. I don't recall.

19          MR. RUBIN: You don't recall.

20          MR. NEUDECK: Yeah. I wasn't paying that close  
21 attention to Black Slough at the time. There may be.

22          MR. RUBIN: Let's look at the assessor parcel  
23 map for 1919. I believe it's the last assessor parcel  
24 map that's been marked as Exhibit 3H.

25                 There's a feature that appears at the top of

1 the map a little bit to the right of center. Is that  
2 feature labeled Black Slough?

3 MR. NEUDECK: Yes, it is.

4 Well, let me clarify that we're looking at the  
5 1919 assessor map. Both you and I are. And there's a  
6 feature that's shown as Black Slough.

7 MR. RUBIN: Is there also a feature that's  
8 labeled Whiskey Slough?

9 MR. NEUDECK: Yes, there is.

10 MR. RUBIN: There is a feature that moves --  
11 that is depicted and runs from Burns Cutoff to Middle  
12 River, correct?

13 MR. NEUDECK: That --

14 MR. RUBIN: Excuse me. That's depicted on the  
15 assessor parcel map from 1919 within Exhibit 3H?

16 MR. NEUDECK: Yes, and that's a feature I  
17 contend is Duck Slough.

18 MR. RUBIN: But on this map, it's labeled a  
19 levee, correct?

20 MR. NEUDECK: That is correct.

21 MR. RUBIN: On the assessor parcel maps that  
22 are within Exhibit 3H, all of the features that run from  
23 Burns Cutoff to Middle River are labeled as a levee.  
24 They are not labeled as Duck Slough, correct?

25 MR. NEUDECK: I'm going to ask you to repeat

1 that question. I'm not sure of the time reference  
2 there. I don't want to misstate.

3 MR. RUBIN: I'll rephrase my question.

4 MR. NEUDECK: Okay. I apologize.

5 MR. RUBIN: The assessor parcel maps that are  
6 marked as Exhibit 3H all reflect a feature that runs  
7 from Burns Cutoff to Middle River, correct?

8 MR. NEUDECK: Many of them do, yes.

9 MR. RUBIN: And those -- well, let me -- which  
10 assessor parcel maps do not depict a feature that runs  
11 from Burns Cutoff to Middle River?

12 MR. NEUDECK: I don't -- you know, I'd have to  
13 walk back through. They're -- for the most part, it's  
14 depicted.

15 MR. RUBIN: And --

16 MR. NEUDECK: I don't have a direct reflection  
17 if there's one that's missing.

18 MR. RUBIN: When a feature's depicted on the  
19 assessor parcel maps that have been marked as Exhibit 3H  
20 that runs from Burns Cutoff to Middle River, the feature  
21 is labeled as a levee, correct?

22 MR. NEUDECK: Okay. That's the same question  
23 you asked earlier, and I'm still having trouble  
24 understanding it.

25 When -- I'm not sure what feature you are

1 referring to when you ask that question. I'm really --  
2 I apologize for the confusion.

3 MR. RUBIN: Okay.

4 MR. NEUDECK: I better get -- listen a little  
5 closer.

6 MR. RUBIN: I want to make sure our record --

7 MR. NEUDECK: Okay.

8 MR. RUBIN: -- is clear so I will ask my  
9 question until you understand it.

10 MR. NEUDECK: Okay.

11 MR. RUBIN: The assessor parcel maps that have  
12 been marked Exhibit 3H.

13 MR. NEUDECK: Okay.

14 MR. RUBIN: You said some of them depict a  
15 feature that runs from Burns Cutoff to Middle River.

16 MR. NEUDECK: That is correct.

17 MR. RUBIN: And my question is: That feature,  
18 when it's depicted on an assessor parcel map that's been  
19 marked as Exhibit 3H, is labeled as a levee, correct?

20 MR. NEUDECK: There is some occasions where  
21 it's labeled levee. Not all occasions. As we've  
22 indicated, the 1876, it's not -- it's a blue line.  
23 Doesn't say levee on it.

24 1881, 1882 which is my Exhibit 3L doesn't refer  
25 to it as a levee, even though I contend it's showing

1 Duck Slough with two levees in that particular case.

2 MR. RUBIN: I understand your contentions.

3 I'm trying to understand what you saw on these  
4 maps, and I'll get to your contentions in a second  
5 because I do want to understand the basis for your  
6 contentions.

7 But when it is labeled, it's labeled as a  
8 levee. The feature that runs from Burns Cutoff to  
9 Middle River.

10 MR. NEUDECK: The label to your scene, yes.  
11 There is that label on there.

12 MR. RUBIN: Okay. And now I would like to get  
13 to your contention. My understanding is based on the  
14 statement that appears on page 2 of your written  
15 testimony which has been marked as Exhibit 3, is you  
16 contend that Duck Slough had water in it at the time the  
17 assessor parcel map, which is the assessor parcel map  
18 from 1876, you -- excuse me. Let me rephrase that  
19 question.

20 It's your belief that the 1876 assessor's  
21 parcel map that is within the material marked as Exhibit  
22 3H indicates that Duck Slough had water in it because  
23 the feature is depicted as a blue line?

24 MR. NEUDECK: Yes, that correctly states my  
25 testimony.

1           MR. RUBIN: Is there any other reason you  
2 believe that the assessor parcel map from 1876 indicates  
3 that Duck Slough had water in it at that time other than  
4 the fact that the line is blue?

5           MR. NEUDECK: No.

6           MR. RUBIN: On the assessor's parcel map from  
7 1876, are there other watercourses depicted?

8           MR. NEUDECK: Yes.

9           MR. RUBIN: What other water features are  
10 depicted?

11          MR. NEUDECK: Well, both the Burns Cutoff to  
12 the downstream end and Middle River to the upstream end.

13          MR. RUBIN: And neither of those are depicted  
14 in blue, are they?

15          MR. NEUDECK: Not on this map.

16          MR. RUBIN: Did you look at any assessor parcel  
17 maps that covered other areas on Roberts Island to see  
18 if sloughs are depicted in blue on assessor parcel maps  
19 from 1876?

20          MR. NEUDECK: Well, the 1881-82, which was the  
21 other exhibit I have included which is Exhibit 3L, has  
22 at that point colored in Burns Cutoff and Middle River  
23 in blue green.

24                 This is a -- this issue of coloration and so  
25 forth I know has been testified to substantially that

1 there's variations throughout this. This is not my only  
2 evidence of Duck Slough. I'm just showing it as further  
3 evidence of Duck Slough.

4 MR. RUBIN: I understand that.

5 But what you've testified to today is that  
6 you've developed a belief that in 1876 Duck Slough had  
7 water in it, and your testimony today is the reason you  
8 have that belief is the fact that the 1876 assessor  
9 parcel map is blue.

10 MR. NEUDECK: Yes. And that correctly states  
11 my testimony. I'm not backing off from that.

12 MR. RUBIN: And my question to you was: Have  
13 you looked at other assessor parcel maps from 1876 to  
14 see if other features are depicted with a blue line  
15 similar to the blue line depicted in the 1876 assessor  
16 parcel map that is marked Exhibit 3I?

17 MR. NEUDECK: No, I have not.

18 MR. RUBIN: Mr. Neudeck, do you believe that  
19 Exhibit 3I, the assessor parcel map from 1876, is a  
20 document that is sufficient for the State Water  
21 Resources Control Board to rely upon to render a  
22 conclusion about Duck Slough?

23 MR. NEUDECK: I think it would go into the  
24 record as an exhibit that demonstrates a facility in  
25 this area. Yes, I think they can rely, give it weight.

1 I think you in your cross-examination have  
2 given reasons why it may not be the strongest piece of  
3 evidence, but I think it's a piece of evidence.

4 MR. RUBIN: Do you think it's an important  
5 piece of evidence?

6 MR. NEUDECK: For this time frame in history, I  
7 think it's an important piece of evidence.

8 MR. RUBIN: Okay. Let me ask you a question  
9 about Exhibit 3I which is the assessor parcel map from  
10 1876.

11 If I were to draw the location of the Mussi  
12 parcel, would it touch the blue line?

13 MR. NEUDECK: No, it would not.

14 MR. RUBIN: And if I were to draw the location  
15 of the Pak and Young parcel, would it touch the blue  
16 line?

17 MR. NEUDECK: Not likely.

18 This is -- as I indicated in my, I believe, my  
19 direct summary that this was a very rough rendering of  
20 its configuration, and I wouldn't anticipate that it  
21 would fall on the exact alignment of the channel.

22 MR. RUBIN: Thank you.

23 I now have a question about Exhibit 3M, which  
24 is a map of Roberts Island. Do you have Exhibit 3M  
25 before you Mr. Neudeck?

1 MR. NEUDECK: Yes, I do.

2 MR. RUBIN: And Exhibit 3M is a map of a  
3 portion of Roberts Island that's dated 1883; is that  
4 correct?

5 MR. NEUDECK: That is correct.

6 MR. RUBIN: Now it's your conclusion, I  
7 believe, that the Exhibit 3M depicts Duck Slough; is  
8 that correct?

9 MR. NEUDECK: Yes.

10 MR. RUBIN: And you draw that conclusion  
11 because there is a line -- both a solid line and a  
12 dashed line that runs from Burns Cutoff to Middle River?

13 MR. NEUDECK: That's correct.

14 MR. RUBIN: And it's your belief that the  
15 dashed line or the dotted line depicts a levee?

16 MR. NEUDECK: Yes, that is correct.

17 MR. RUBIN: And it's your conclusion that the  
18 solid line depicts Duck Slough?

19 MR. NEUDECK: That's correct.

20 MR. RUBIN: Is it possible that the solid line  
21 depicts a division between two sections of Roberts  
22 Island?

23 MR. NEUDECK: Duck Slough in itself is the  
24 division line between the two facilities. So it  
25 could -- that feature is the division between middle and

1 lower.

2           It's my contention that that is Duck Slough.  
3 That's the alignment of it. Further evidence  
4 demonstrates that there was a slough in this vicinity.

5           This again goes to the weight of the evidence  
6 that this is, you know, follows the same exact alignment  
7 as our 1911 quad and so forth.

8           MR. RUBIN: Does the Exhibit 3M have a key or a  
9 legend that identifies the intended features depicted on  
10 the map?

11           MR. NEUDECK: No, it does not. But one can  
12 draw the conclusion when looking at the division between  
13 upper and middle, which is -- if Mr. Lindsay can pan up.  
14 Actually, it's right at the bottom of this.

15           One can see below the Mr. Diablo base meridian  
16 line here. You can see the word Cross Levee here. This  
17 is a dash levee. This is a land levee that runs  
18 between -- this is the Middle Division. This is the  
19 upper division.

20           So here is the levee. There's no watercourse  
21 next to it. So you can draw the conclusion that that  
22 dashed line is the levee.

23           MR. RUBIN: I understand the basis for your  
24 conclusion that a dashed line or dotted line is a levee.

25           My question dealt with the solid line that

1 you've used to form your belief that it depicts Duck  
2 Slough. The solid line that runs from Burns Cutoff to  
3 Middle River. I'm trying to understand how you formed  
4 your belief.

5           There is no key, there is no legend for the map  
6 Exhibit 3M, correct?

7           MR. NEUDECK: No, there is not.

8           MR. RUBIN: Okay. So the solid line that runs  
9 from Burns Cutoff to Middle River also is the division  
10 between the Lower Division and the upper division,  
11 correct?

12           MR. NEUDECK: It's -- yeah. At this time  
13 frame, it was called Upper Division. And I apologize  
14 for hesitating there for a moment. That's actually now  
15 the Middle Division.

16           And I just demonstrated here the Upper Division  
17 is upstream of the Cross Levee. This is now the Upper  
18 Division, Middle Division, Lower Division.

19           And I apologize for hesitating there for a  
20 moment because, you know, as I represent this property  
21 out there, that's how I refer to it.

22           But back then, the Lower Division was west of  
23 Duck Slough. Upper Division was east of Duck Slough.  
24 So to answer your question, that's correct.

25           MR. RUBIN: Okay. So just to make sure the

1 record's clear, the solid line that runs from Burns  
2 Cutoff to Middle River depicts the division between  
3 lower -- the Lower Division and the Upper Division of  
4 Roberts Island as represented on Exhibit 3M.

5 MR. NEUDECK: It's a parallel line. It could  
6 serve that purpose as well.

7 MR. RUBIN: Thank you.

8 Now I believe I have just maybe one or two last  
9 questions on Exhibit 3U. Do you have that before you,  
10 Mr. Neudeck?

11 MR. NEUDECK: Yes, I do.

12 MR. RUBIN: Exhibit 3U is a map that either you  
13 prepared or somebody at your direction prepared; is that  
14 correct?

15 MR. NEUDECK: Yes. Mr. Blake, our surveyor,  
16 who is witness in the Woods Irrigation Company hearing.

17 MR. RUBIN: If I understand Exhibit 3U  
18 correctly, what you've depicted or what your staff has  
19 depicted is an interpretation of information provided on  
20 historic maps?

21 MR. NEUDECK: That's correct.

22 MR. RUBIN: And it doesn't necessarily reflect  
23 the actual information on the map; it reflects your  
24 interpretation of that information?

25 MR. NEUDECK: That's correct.

1 MR. RUBIN: I have no further questions.

2 CO-HEARING OFFICER BAGGETT: Thank you.

3 Any other parties, cross-examination?

4 MR. O'LAUGHLIN: No cross.

5 MR. RUIZ: No cross.

6 MS. GILLICK: No.

7 MR. POWELL: No questions.

8 CO-HEARING OFFICER BAGGETT: Charlie?

9 --o0o--

10 QUESTIONS BY CO-HEARING OFFICER HOPPIN

11 --o0o--

12 CO-HEARING OFFICER HOPPIN: Mr. Neudeck,

13 Mr. Herrick's -- or Mr. O'Laughlin's schematic up there,

14 the prior one, the first one, showed a separation.

15 Would you mind Jon -- yeah. Please.

16 The triangle represented the Pak/Young

17 property, then we had High Ridge Levee and your

18 estimation of the location of Duck Slough.

19 Have you looked at the assessor's parcel map or

20 a Farm Service Agency map? Do you know if the Pak/Young

21 property actually has more acreage than would be shown

22 by the physical representation of their property, or

23 could it potentially extend, as many parcels do, past

24 what would be considered the actual boundaries of the

25 property and through this High Ridge Levee?

1 Do you know if the acreage --

2 MR. NEUDECK: Well, yeah, and that -- and I  
3 think that reflects back a little bit on my testimony as  
4 to what was the, you know, original call. The original  
5 call --

6 CO-HEARING OFFICER HOPPIN: That's --

7 MR. NEUDECK: Yeah, the original call was to  
8 Duck Slough, then along Duck Slough or High Ridge Levee.

9 Where was High Ridge Levee at the time that  
10 that original call was made? Follow on, they start to,  
11 you know, bring in courses and meets and bounds  
12 descriptions and so forth.

13 But the original transfer of this property had  
14 a call to a physical feature. Where that exactly is,  
15 sometimes difficult to put in.

16 CO-HEARING OFFICER HOPPIN: But the High Ridge  
17 Levee still exists today.

18 MR. NEUDECK: High Ridge Levee is now what we  
19 believe to be Inland Drive. So it's been degraded and  
20 turned into a county road.

21 So to the extent that one would go back in  
22 history and try to plot that would probably take some  
23 effort to try and determine exactly -- I mean that's  
24 what some of these maps would do to help us determine  
25 exactly where High Ridge Levee was at that time.

1 CO-HEARING OFFICER HOPPIN: But it's not  
2 unusual to have a deed or an assessor's parcel map  
3 number that extends actually into a county road or a  
4 state highway for that matter.

5 MR. NEUDECK: Yeah. For the most part, that's  
6 really what happens. Facilities like that or an  
7 easement.

8 CO-HEARING OFFICER HOPPIN: But you don't know  
9 if that -- you can't tell from calculations if in fact  
10 the original property did extend and was taken through  
11 an easement or some other process.

12 MR. NEUDECK: I have not.

13 CO-HEARING OFFICER HOPPIN: Okay.

14 MR. NEUDECK: Thank you.

15 CO-HEARING OFFICER BAGGETT: Is that it?  
16 Anything else? That's the case-in-chief. Do you want  
17 to admit your exhibits?

18 MR. HERRICK: I'd like a little redirect, if I  
19 may.

20 CO-HEARING OFFICER BAGGETT: Proceed.

21 --o0o--

22 REDIRECT EXAMINATION BY MR. HERRICK

23 FOR WOODS IRRIGATION COMPANY

24 --o0o--

25 MR. HERRICK: Mr. Neudeck, let me flip the page

1 over to MSS-6 please.

2 Mr. Neudeck, you recall the questions asked of  
3 you by Mr. O'Laughlin regarding this exhibit, correct?

4 MR. NEUDECK: Yes, I do.

5 MR. HERRICK: Now this exhibit includes  
6 representations of Burns Cutoff, Duck Slough, and High  
7 Ridge Levee, and then another levee along Duck Slough,  
8 correct.

9 MR. NEUDECK: That is correct.

10 MR. HERRICK: Now you were here, and you have  
11 an understanding of Mr. Lajoie's testimony in this  
12 proceeding, don't you?

13 MR. NEUDECK: Yes, I do.

14 MR. HERRICK: And is it your understanding that  
15 his testimony was that Duck Slough was originated or  
16 began off of meridian River, correct?

17 MR. NEUDECK: That's correct.

18 MR. HERRICK: And that was evidenced by his  
19 representations of soil types distributed by this  
20 channel at that upper end on Middle River, correct?

21 MR. NEUDECK: Right. And the extent of the  
22 sedimentary deposits off the slough.

23 MR. HERRICK: And those sedimentary deposits,  
24 without overstating it, became smaller the farther down  
25 Duck Slough you went approaching Burns Cutoff, correct?

1 MR. NEUDECK: That is correct.

2 MR. HERRICK: So if MSS-6 represents 1875 as a  
3 year, or 1876, do you know what the height of any  
4 sedimentary deposit around Duck Slough is at that time?

5 MR. NEUDECK: No, but historically speaking,  
6 the sedimentary levees were typically on the order of,  
7 you know, no more than 3 to 4 feet high throughout this  
8 region based on historical documents in this region.

9 But I don't have any direct recollection as to  
10 what the height would be.

11 MR. HERRICK: But again, pursuant to  
12 Mr. Lajoie's testimony, this is the tail end of those  
13 sedimentary deposits, correct?

14 MR. NEUDECK: That's correct.

15 MR. HERRICK: Now, the sedimentary deposits  
16 were a result of the channel which we now are calling  
17 Duck Slough, correct?

18 MR. NEUDECK: Yes.

19 MR. HERRICK: So does that channel run  
20 alongside of this -- these sedimentary deposits, or does  
21 it run through them?

22 MR. NEUDECK: No, it runs through. And that --  
23 in my direct testimony on all three cases, but  
24 particularly in the Pak/Young and Mussi, I do go through  
25 the history of how a natural slough overbanks, deposits

1 its heavier sediments along the natural banks.

2 And that's where these natural what we call  
3 shoestring levees occurred which were on the order of,  
4 you know, 3 to 4 feet high, right immediately adjacent  
5 to the banks. So that would be on either side of the  
6 slough.

7 MR. HERRICK: So if MSS-6 labels the northern  
8 bank or levee along Duck Slough as High Ridge Levee but  
9 the southern one as a natural levee, that would be  
10 incorrect, would it not?

11 MR. NEUDECK: Well, they both start off as  
12 natural. And then the High Ridge for the most part was  
13 improved further upstream. But at some point may as  
14 well been improved down here, but I don't know that it  
15 was in this time frame.

16 MR. HERRICK: And it's your understanding that  
17 the Samson dredger went up Duck Slough for some distance  
18 helping to reclaim upper Roberts Island, correct?

19 MR. NEUDECK: Upper Division, yes.

20 MR. HERRICK: And if you are trying to reclaim  
21 the Upper Division, then at least some if not most of  
22 the dredge material being removed by the Samson dredger  
23 is being put on what's labeled the natural levee of  
24 MSS-6, correct?

25 MR. NEUDECK: Right. It would be on the --

1     yeah.    The pink line.

2                 MR. HERRICK:    So given these questions and  
3     answers you've just made, do you know whether or not  
4     MSS-6 is correct to label High Ridge Levee a distinct  
5     and separate feature on the north side of Duck Slough as  
6     opposed to the features on either side of Duck Slough?

7                 MR. NEUDECK:    No, I don't think it is exactly a  
8     distinction.

9                 It is my testimony that the High Ridge Levee,  
10    particularly down, you know, further south by the Pak  
11    Young Mussi parcel, is on that side of the slough.

12                But maybe as we get down towards the end of  
13    Duck Slough towards Burns Cutoff, to differentiate from  
14    that perspective, the High Ridge is a higher levee than  
15    the opposing bank isn't entirely likely.

16                MR. HERRICK:    Now Mr. Neudeck, these sloughs  
17    both fed and drained the swamplands before reclamation,  
18    correct?

19                MR. NEUDECK:    That's correct.

20                MR. HERRICK:    And although you don't know the  
21    depth of any particular slough in any particular year a  
22    hundred years ago, is it not correct that those slough  
23    bottoms were then lower than the land surrounding them?

24                MR. NEUDECK:    Yes, that -- the answer is yes.  
25    But that certainly can be exhibited by the fact that

1 they put in tide gates to drain this.

2 So it was below sea level which allowed water  
3 to drain out and therefore allow the reclamation of the  
4 Upper Division of Roberts.

5 MR. HERRICK: Mr. Neudeck, you just mentioned  
6 the tide gates. Let's assume that these two tide gates  
7 referenced on MSS-6 were installed and initially only  
8 operated to drain Duck Slough into Burns Cutoff at lower  
9 tide levels. Okay? That's the assumption.

10 MR. NEUDECK: Yes.

11 MR. HERRICK: Now, the first time those tide  
12 gates open and water pours into Burns Cutoff, water then  
13 moves through Duck Slough, correct?

14 MR. NEUDECK: Yes. It would be moving out of  
15 Duck Slough into Burns Cutoff because of an elevational  
16 difference.

17 MR. HERRICK: Now, given that the channel then  
18 is lower than sea level, and at this time certainly most  
19 of the land is not yet reclaimed, what happens when  
20 water drains out of Duck Slough into the Burns Cutoff?  
21 Does Duck Slough stay lowered or does it refill with all  
22 the seepage from the surrounding area?

23 MR. NEUDECK: Clearly refilled. It would  
24 refill today.

25 Any hole -- anything in the Upper, Middle,

1 Lower Division of Roberts, if you dig a hole of any  
2 depth, 6 to 8 feet, you're going to fill it full of  
3 water so that it would refill due to the seepage.

4 MR. HERRICK: In fact, drainage canals today  
5 are constantly pumped back -- pumped out and continue to  
6 refill regardless of whether or not upstream irrigation,  
7 upslope irrigation is happening, correct?

8 MR. NEUDECK: Yeah. Drainage in this area is  
9 24 hours a day, seven days a week, 365 days a year.

10 You'd have to maintain, you know, that  
11 elevation that you want or the drainage feature has to  
12 be maintained continuously. Otherwise it would increase  
13 and ultimately flood the land around it because it's  
14 below sea level.

15 MR. HERRICK: So when you dam off Duck Slough  
16 from Burns Cutoff and put two floodgates in it, you  
17 don't end up with a dry slough. You end up with a  
18 slough that now has water that moves only one direction  
19 rather than two; is that correct?

20 MR. NEUDECK: That's correct.

21 MR. HERRICK: Because without the dam or the  
22 floodgates, the tides would push water the other  
23 direction, correct?

24 MR. NEUDECK: Yes.

25 MR. HERRICK: So if you hypothetically have a

1 piece of property that abuts this feature and someone  
2 dams it off on Burns Cutoff and puts two floodgates in  
3 it, is that person's property still abutting a natural  
4 waterway?

5 MR. NEUDECK: Yeah, the slough's going to fill  
6 back up regardless, and it's going to be full a good  
7 portion of the time.

8 And even though as it drains it would not drain  
9 completely, likely it would only be momentarily drained,  
10 even as we sit here today as we pump islands throughout  
11 this region, we don't ever pump the canals to a dry  
12 condition.

13 It just doesn't exist. Doesn't happen.  
14 Particularly in this setting because you would only be  
15 operating it -- you know, the low tides which happen  
16 twice a day, you would never be able to evacuate all the  
17 water out.

18 Furthermore, there's a constant head pressure  
19 from the surrounding soils filling that canal -- or  
20 filling that slough back up.

21 MR. HERRICK: So if the Mussi and Pak and Young  
22 parcels were abutting Duck Slough at this time, and  
23 somebody installs a dam and two floodgates at Burns  
24 Cutoff, the channel near Mussi and Pak and Young still  
25 has water in it, does it not?

1 MR. NEUDECK: Yes, it would.

2 MR. HERRICK: Now of course, we don't know how  
3 much at what time of what day or at any particular  
4 moment how much is in those. But I believe you just  
5 said that the water does seep back in constantly and  
6 continuously, and so those parcels then have a channel  
7 abutting them that continuously fills up; is that  
8 correct?

9 MR. NEUDECK: That is correct.

10 MR. HERRICK: Mr. O'Laughlin also asked you  
11 whether or not you knew how much water was removed from  
12 Duck Slough for irrigation purposes. Do you recall  
13 that?

14 MR. NEUDECK: Yes, I do.

15 MR. HERRICK: And he asked you how many acres  
16 were being irrigated from Duck Slough also. Do you  
17 recall that?

18 MR. NEUDECK: Yes, I do.

19 MR. HERRICK: Do you recall Mr. Mussi's  
20 testimony in this proceeding and his attachment to that  
21 testimony which included a map from 1914?

22 MR. NEUDECK: Yes, I'm aware of that.

23 MR. HERRICK: And would you agree that that map  
24 generally shows alfalfa being grown in the areas which  
25 include the Mussi and the Pak and Young parcels?

1 MR. NEUDECK: Yes, that is correct.

2 MR. HERRICK: Now Mr. Neudeck, you are familiar  
3 with alfalfa being a multiyear crop, are you not?

4 MR. NEUDECK: Most definitely.

5 MR. HERRICK: And that means that it requires  
6 irrigation in the summer months, does it not?

7 MR. NEUDECK: Right. I mean it would require  
8 irrigation -- being it's a multiyear crop, it would have  
9 to have a reliable source of irrigation.

10 One wouldn't plant an alfalfa crop without a  
11 reliable source of irrigation. If it was an unreliable  
12 source, the likeliness would be it would be something  
13 more of a row crop nature where you have water and then  
14 you can't rely upon it.

15 No farmer would invest in a multiyear crop such  
16 as alfalfa without a reliable source of irrigation.

17 MR. HERRICK: So in your opinion, you have two  
18 pieces of property, the Mussi and Pak and Young parcel,  
19 which abut a feature which continually feed -- is fed  
20 with water and are growing a crop which requires  
21 irrigation in the summer over multiple years; is that  
22 correct?

23 MR. NEUDECK: That's correct.

24 MR. HERRICK: Mr. Neudeck, finally Mr. Rubin  
25 asked you a number of questions about a blue line on

1 both an 1876 assessor's parcel map and one on an 1881-82  
2 map; is that correct?

3 MR. NEUDECK: Yes.

4 MR. HERRICK: I think I have those dates  
5 correct.

6 MR. NEUDECK: Those are both correct.

7 MR. HERRICK: Now, in 1876, Mr. Neudeck, what  
8 are the possible reasons for drawing a squiggly line  
9 from Burns Cutoff down to Middle River that approximates  
10 but is not exactly coexistent with the Duck Slough  
11 feature you've identified? What are the possible  
12 reasons for drawing that line?

13 MR. NEUDECK: Well, I mean it could be that say  
14 the division of lands. We have focused on this.

15 MR. HERRICK: Let's stop right there.

16 Let's look at the 1876 map, Mr. Neudeck, and  
17 does not Mr. Whitney own both sides of the land there,  
18 both sides of that feature?

19 MR. NEUDECK: That is correct.

20 MR. HERRICK: So the line on the 1876 map is  
21 not some sort of property line division, is it?

22 MR. NEUDECK: Not in the case of 1876. It  
23 would not be between two property owners.

24 MR. HERRICK: Could it be a power line somebody  
25 was drawing across the island in 1876?

1           MR. NEUDECK: I don't believe power was in this  
2 area at that time frame. I think power came in much  
3 later than that.

4           MR. HERRICK: Were there any roads going  
5 through this swampland in 1876 that that would be meant  
6 to represent?

7           MR. NEUDECK: Reclamation was occurring during  
8 this time frame, so if there was roads it would have to  
9 be along a naturally high bank of some sort, but not  
10 likely, no.

11           This was swampland that was just in the process  
12 of its early reclamation during this time frame.

13           MR. HERRICK: Mr. Neudeck, do you think  
14 somebody switched pencils and took a blue one to  
15 approximate a levee that was either being or would be  
16 constructed along that line?

17           MR. NEUDECK: Not -- I don't know.

18           My testimony, I think, stands for its purpose  
19 in that it was trying to identify a watercourse. I  
20 think blue reflects water, and I think it speaks well to  
21 what the map I think was trying to show.

22           MR. HERRICK: So Mr. Neudeck, without being  
23 able to ask the cartographer what he meant by that,  
24 isn't it your conclusion that the only reasonable  
25 explanation for someone to have drawn this blue line

1 where we know Duck Slough existed that he was trying to  
2 approximate a water feature on this map?

3 MR. NEUDECK: Yes.

4 MR. HERRICK: And although there are other  
5 possible explanations, the only reasonable one is that  
6 somebody was representing this water feature, is that  
7 correct?

8 MR. NEUDECK: That's what I contend.

9 MR. HERRICK: Now of course, you've also stated  
10 that -- and it's been shown that the blue line doesn't  
11 appear on all the maps. Does that change your opinion?

12 MR. NEUDECK: No.

13 MR. HERRICK: And of course there are other  
14 waterways that are either different colors or maybe not  
15 even marked. Does that change your opinion?

16 MR. NEUDECK: No.

17 MR. HERRICK: I believe that is all. I have no  
18 further questions. Thank you.

19 CO-HEARING OFFICER BAGGETT: Prosecution have  
20 any recross?

21 MR. ROSE: No, I don't have any recross.

22 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin?

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RE CROSS-EXAMINATION BY MR. O'LAUGHLIN  
FOR MODESTO IRRIGATION DISTRICT

MR. O'LAUGHLIN: Mr. Neudeck, my name is Tim O'Laughlin. I represent Modesto Irrigation District. Did you ever review the actual Atwater report that Mr. Lajoie relied upon?

MR. NEUDECK: No, I did not.

MR. O'LAUGHLIN: Have you ever reviewed a 1941 soil survey map that was done for Roberts Island?

MR. NEUDECK: No, I have not.

MR. O'LAUGHLIN: Okay. In regards to Middle River, is it your contention then as we look at the MSS-6 -- let me draw something real quick.

(Drawing on exhibit)

MR. O'LAUGHLIN: On MSS-6 now I've drawn a blue line on the left-hand side of MSS-6 and labeled it Middle River.

So your contention is that Duck Slough ran all the way from Burns Cutoff then to Middle River, correct?

MR. NEUDECK: That's correct.

MR. O'LAUGHLIN: Okay. Now, when was the connection between Middle River and Duck Slough leveed?

MR. NEUDECK: I don't have an exact day on

1 that.

2 MR. O'LAUGHLIN: Wouldn't it be around 1875,  
3 1876?

4 MR. NEUDECK: It's in that general vicinity  
5 because that's when the reclamation was taking place,  
6 yes.

7 MR. O'LAUGHLIN: Okay. Now, do you have any  
8 documentation that you are aware of that when the levee  
9 was built across -- and I'm assuming I can call it the  
10 mouth of Duck Slough because you're asserting that it  
11 starts there and ends at Burns Cutoff -- across the  
12 mouth of Duck Slough at Middle River, that any tide  
13 gates were put in at that location?

14 MR. NEUDECK: You're asking whether I contend  
15 whether there was any tide gates?

16 MR. O'LAUGHLIN: No. If there -- if you have  
17 any evidence of tide gates being installed at Duck  
18 Slough at Middle River through the levee.

19 MR. NEUDECK: No, I don't have direct evidence  
20 to that.

21 MR. O'LAUGHLIN: Now, your contention is that  
22 generally the -- well, let me go through a litany of  
23 questions, and we've done this before.

24 Do you know what the elevation of the invert of  
25 Duck Slough was where it entered Middle River?

1 MR. NEUDECK: No.

2 MR. O'LAUGHLIN: Okay. Do you know what the  
3 width of the channel was of Duck Slough where it entered  
4 Middle River?

5 MR. NEUDECK: No.

6 MR. O'LAUGHLIN: Do you know the depth of the  
7 channel where it entered Middle River?

8 MR. NEUDECK: No, I do not.

9 MR. O'LAUGHLIN: Okay. Do you know the  
10 Manning's n of the channel from where it leaves Middle  
11 River and enters into Duck Slough?

12 MR. NEUDECK: No, I do not.

13 But I do want to just make a quick  
14 clarification. In the Woods Irrigation Company, we did  
15 go through a range of Manning's ns.

16 MR. O'LAUGHLIN: Right.

17 MR. NEUDECK: I know that's been an important  
18 question for you, and I did talk about the sensitivity  
19 of Manning's n and how that varied. But, you know, I  
20 could venture a good assumption, but I do not know the  
21 exact Manning's n at that point, no.

22 MR. O'LAUGHLIN: Okay. Do you know from Middle  
23 River if Burns Cutoff was -- had tide gates on it that  
24 operated in a uni-directional manner, do you know how  
25 much land was being irrigated from Middle River via Duck

1 Slough prior to 1900?

2 MR. NEUDECK: No. I think you asked this  
3 question under cross-examination.

4 MR. O'LAUGHLIN: I did it from Burns Cutoff  
5 down. Now I'm going from --

6 MR. NEUDECK: Oh, I apologize. I misunderstood  
7 your question then. I pictured you asking the exact  
8 same question, so I'm going to ask you to re-ask it and  
9 I will answer it accordingly. I apologize.

10 MR. O'LAUGHLIN: No, that's --

11 MR. NEUDECK: I just thought it was the same  
12 question over.

13 MR. O'LAUGHLIN: Not a problem.

14 From Middle River into Duck Slough, how much  
15 acreage is being irrigated prior to 1900?

16 MR. NEUDECK: I do not know.

17 MR. O'LAUGHLIN: Now it's your contention that  
18 the land slope from Middle River -- Middle River on a --  
19 on the land surface elevation is higher than the Burns  
20 Cutoff side; is that correct?

21 MR. NEUDECK: Yes, that's correct.

22 MR. O'LAUGHLIN: (Drawing on exhibit)

23 On MSS-6, I've drawn next to Middle River on  
24 the left-hand side LSE, land surface elevation, and I've  
25 marked it with a plus.

1 I've drawn three black arrows across to a point  
2 next to Burns Cutoff with an LSE minus generally  
3 depicting the slope of the ground along the stretch of  
4 property, correct?

5 MR. NEUDECK: Yeah, that's a -- that would  
6 indicate direction at which it slopes, but I'm not  
7 contending that indicates plus elevations to minus  
8 elevations.

9 I don't want to misrepresent this exhibit  
10 because if -- I'd like to put some elevations on that  
11 exhibit before I let that go because I believe the  
12 elevation varies from sea level to below sea level.

13 MR. O'LAUGHLIN: So from -- so your contention  
14 is it goes from -- say that again? I'm sorry. I missed  
15 that.

16 MR. NEUDECK: From sea level --

17 MR. O'LAUGHLIN: To --

18 MR. NEUDECK: -- to below sea level.

19 MR. O'LAUGHLIN: Oh, okay.

20 MR. NEUDECK: So your plus would indicate  
21 something above sea level, and I just didn't want to  
22 misrepresent the -- so --

23 MR. O'LAUGHLIN: (Drawing on exhibit)

24 THE WITNESS: Sea level. Sea level to below  
25 sea level.

1           MR. O'LAUGHLIN: Okay. So now I've marked on  
2 the map, on the Exhibit MSS-6, this schematic, a parens,  
3 sea level on the left under LSE plus. Then below sea  
4 level in parens under LSE minus on Burns Cutoff.

5           Does that help you?

6           MR. NEUDECK: Yes. That more -- that better  
7 reflects what -- and I haven't given you elevations, but  
8 it better reflects what you wrote up there.

9           MR. O'LAUGHLIN: We're going to keep it on a  
10 large scale.

11           Now my understanding is the -- if -- is it your  
12 contention then that the general gradient of the channel  
13 follows the general gradient of the land surface  
14 elevation?

15           MR. NEUDECK: Yes.

16           MR. O'LAUGHLIN: Okay. So now if we're at the  
17 Pak/Young property, what amount of head would you need  
18 to move water up slope to the Pak/Young property?

19           MR. NEUDECK: Well, considering the Pak/Young  
20 is from --

21           MR. O'LAUGHLIN: From Burns Cutoff.

22           MR. NEUDECK: Yeah. I assumed that's what you  
23 meant when you said upward direction.

24           The Pak/Young property is in that at sea level  
25 or slightly below sea level. Our tides in this area

1 testified to earlier, the mean tides around elevation 3.  
2 So we could effectively move water up from Burns Cutoff  
3 and put 3 feet of water over Pak/Young.

4           Regardless of what the condition is of the  
5 bottom of that channel. Keep in mind I'm dealing with  
6 elevation. The water would come in vis-a-vis the tide.

7           MR. O'LAUGHLIN: Correct. So in this scenario  
8 then, in order to move water up gradient, if you had a  
9 water surface elevation in Burns Cutoff, you would be  
10 able to push water up the channel gradient as long as  
11 the -- and apply it to property as long as that property  
12 was below the water surface elevation in Burns Cutoff,  
13 generally speaking.

14           MR. NEUDECK: Exactly.

15           MR. O'LAUGHLIN: Okay.

16           MR. NEUDECK: Correct.

17           MR. O'LAUGHLIN: Now, once again, we wouldn't  
18 know how much and -- well, strike that. Sorry.

19           Is it true then that on these cycles for tides  
20 that you would have six months -- six hours at or near  
21 peak and then six hours below peak?

22           MR. NEUDECK: Yeah. Four tides a day, two  
23 highs, two lows.

24           MR. O'LAUGHLIN: Okay. So when the tide gets  
25 below let's say your elevation of 3 feet, and the -- or

1 at minus -- let's say it goes minus 1 foot below at low  
2 tide, then at that point in time water couldn't be  
3 pushed upstream to Pak/Young property, correct?

4 MR. NEUDECK: That's correct.

5 Typically the way they worked these, as  
6 Mr. Nomellini showed in his tide gate structure, the  
7 flap gate then traps that high tide, and the next high  
8 tide moves in and moves it up a little bit further, but  
9 nowhere can you move it any higher than the highest tide  
10 in Burns Cutoff.

11 But you don't allow it to run back out and have  
12 to wait to retrap that water. You trap what the  
13 elevation is. As much volume of water as you can get  
14 into that slough, you trap it then wait for the next  
15 high tide cycle and then move more water in provided  
16 that next high tide cycle is higher than the prior one.

17 Or if they've irrigated out of it, then there  
18 would be residual room for the next series to come in.

19 MR. O'LAUGHLIN: Right. Because in the  
20 scenario that you just described, you would have to  
21 have -- if water is trapped and let's say hypothetically  
22 trapped at elevation 3 feet, if the next high tide --  
23 and it stays at 3 feet -- if the next high tide is 2.5  
24 feet, you're not going to push water into that slough?

25 MR. NEUDECK: No, you will not.

1 MR. O'LAUGHLIN: All right.

2 Now, if it's at 3 feet, they shut the flap  
3 gate, everybody irrigates, and it drops down to zero,  
4 sea level, and we have a 2.5 tide come in, you could  
5 open the valve again and then push water back up the  
6 slough, correct?

7 MR. NEUDECK: That's correct.

8 MR. O'LAUGHLIN: Okay. That's just general  
9 hydraulics, correct?

10 MR. NEUDECK: Right.

11 MR. O'LAUGHLIN: All right.

12 MR. NEUDECK: Now keep in mind that's not the  
13 only influence in that canal. As I testified in  
14 redirect, there is seepage that's also going into that  
15 canal.

16 So as you're dropping that elevation down  
17 below, you know, below 3 feet, you'd be getting seepage  
18 in from the adjoining property as well to fill that  
19 canal.

20 MR. O'LAUGHLIN: Okay. You said you were  
21 familiar with alfalfa. How familiar are you with  
22 alfalfa?

23 MR. NEUDECK: I am a civil engineer that  
24 practices in this area. So I've seen it grown for 28  
25 years that I've been working in this region.

1           MR. O'LAUGHLIN: Okay. Now, what is the root  
2 zone for alfalfa? How deep do the roots go?

3           MR. NEUDECK: I'd be speculating. I think less  
4 than 2 feet.

5           MR. O'LAUGHLIN: Now if I'm assuming what you  
6 stated earlier in regards to the island, if people have  
7 property, and that property is at or near sea level, as  
8 the Pak/Young property is, and the root zone goes down 2  
9 feet, as long as the tides and the water surface  
10 elevation around the island are greater than minus 2  
11 feet, those root zones would be getting that seepage  
12 water much like the Duck Slough would, correct?

13           MR. NEUDECK: Yeah, that -- if that were the  
14 case. But if you recall in my direct testimony, I  
15 indicated that this land was drained and reclaimed.

16           So they were draining it to an elevation to  
17 control, you know, a designated water surface for their  
18 area. Whether or not that elevation was where that  
19 elevation was, I don't know. I wasn't there in that  
20 time frame.

21           But the question was could they subirrigate?  
22 That potential could be there, yes. The answer is --  
23 answering yes.

24           But for the most part, you know, they were  
25 draining this land, reclaiming it, and then

1 top-irrigating is the more efficient means to irrigate.  
2 That's what the irrigation system that was created by  
3 Woods Irrigation Company was doing for them.

4 So the subirrigation was not a predominant  
5 practice in this region.

6 But, I'm not trying to cross up my testimony.  
7 If the water were to come up, and I was correct in my  
8 root zone -- and I'm speculating -- if it were to come  
9 up into that root zone, you could subirrigate.

10 MR. O'LAUGHLIN: One of the things I understood  
11 from your testimony in regards to the Woods Vasquez  
12 system was when that case happened that Duck Slough  
13 was -- actually had water in it, and it was Duck Slough  
14 that was pushing water out to these other lands that was  
15 actually causing the seepage problem, correct?

16 MR. NEUDECK: That's correct.

17 MR. O'LAUGHLIN: Okay. So if Duck Slough is --  
18 let's say Duck Slough was completely dry, and we're at  
19 the Pak/Young property now, it would still be your  
20 contention that even if Duck Slough was dry there may be  
21 hydraulic pressures coming from Middle River, Burns  
22 Cutoff that would cause water to enter into the  
23 Pak/Young property at a water surface elevation that  
24 would be equal to or approximate to the Burns Cutoff  
25 and/or Middle River elevations, correct?

1           MR. NEUDECK:  Provided they weren't controlling  
2 the drainage, which I think they were.

3           MR. O'LAUGHLIN:  Right.

4           MR. NEUDECK:  Right.

5           MR. O'LAUGHLIN:  Without controlling the  
6 drainage.

7           Now do you have any understanding as to the  
8 depth of the Duck Slough in relationship to the land  
9 surface that was adjacent to it?

10           (Drawing on exhibit)

11           MR. O'LAUGHLIN:  Mr. Neudeck, I've done another  
12 schematic.  I'm going to mark this MSS-7.

13           In regards to MSS-7, I've drawn a channel  
14 called Duck Slough.  On one side I put back in pink  
15 again a depiction showing a natural levee, and on the  
16 left I've drawn a green levee which is called the High  
17 Ridge Levee.

18           So this is a cross-section looking at Duck  
19 Slough.

20           What I'm interested in knowing is if you can  
21 show relative to Duck Slough what the adjacent land  
22 surface elevation was to the invert of the channel.  Was  
23 it higher, or lower?  And if so, do we know to what  
24 degree.

25           MR. NEUDECK:  I really can't.  The only

1 reference I have to depth was the Samson dredge depth  
2 where they dredged to a depth of 7 feet which would, you  
3 know, likely be 7 feet from a low tide. So that would  
4 be like a minus 7 elevation, minus 8 elevation.

5 If the Samson dredge, which I don't contend it  
6 did, but hypothetically, if the Samson dredge made it  
7 all the way up to the Pak Young Mussi parcel, that would  
8 put the depth of the channel, you know, 7 to 8 feet  
9 below the ground surface.

10 I think it was something less than that. But I  
11 don't have any documentation to prove otherwise. I  
12 don't know what the natural slough depth was.

13 As you stated, you asked me that series of  
14 questions which you have on every one of these sloughs,  
15 depth, slope, Manning's n. I answered no to all those.

16 I can't come back now and start answering, you  
17 know, specific depths. I would be misstating my  
18 testimony.

19 So that's the best I can explain. I know it  
20 was of some depth. It was incised or cut in below the  
21 adjoining ground. To what degree and what depth, I do  
22 not have evidence of that.

23 MR. O'LAUGHLIN: Just a couple questions,  
24 follow-up questions, and I'm done.

25 In regards to alfalfa, would you have greater

1 comfort in knowing if the root zones of alfalfa was  
2 6 feet that in fact the alfalfa crop in on where you've  
3 depicted it would -- could in fact be subirrigated  
4 through hydraulics on the island?

5 MR. NEUDECK: If you contend that it was  
6 6 feet --

7 MR. O'LAUGHLIN: Might be.

8 MR. NEUDECK: Might be 6 feet, that would be a  
9 means. It's not the most efficient means for alfalfa.  
10 I know they like to top-irrigate that.

11 But if that was the contention, and I indicated  
12 I was speculating on the 2 feet, if that was consistent,  
13 that could likely get down into that area where the  
14 water was.

15 MR. O'LAUGHLIN: Yeah, because if I understand  
16 your testimony correctly, is that if Pak/Young's at  
17 roughly zero or plus 1 or wherever it is, even minus  
18 1 -- let's say minus 1 to plus 1, mean sea elevation, if  
19 you had a crop grown on there, alfalfa, and the root  
20 zones went down 6 feet, then according to your view of  
21 the world, of what's going on out there, when the tides  
22 to Middle River or Burns Cutoff are running plus 3 to  
23 plus 5, clearly there's hydraulic pressure pushing water  
24 into the Pak/Young parcel at elevations at anything  
25 below that, correct?

1 MR. NEUDECK: Yeah. And I just want to clarify  
2 one thing. You said plus 5. That's a pretty extreme  
3 high tide. That's not an average tide. Just --

4 MR. O'LAUGHLIN: Yours was 3.

5 MR. NEUDECK: Okay.

6 MR. O'LAUGHLIN: No, no.

7 MR. NEUDECK: I don't want people to walk away  
8 from here and say gosh, plus 5. Now -- I mean that's  
9 not a day-to-day. It gets up there. And, you know,  
10 we're about -- this weekend, we're going to be hitting  
11 tides in that range, 4 and a half feet. But that's a  
12 lunar condition that does not occur that often.

13 MR. O'LAUGHLIN: Right. So at 3 -- but even at  
14 3 feet, based on your testimony, water would be able to  
15 move through the island and reach Pak/Young if the roots  
16 went down 6 feet below minus 1 to plus 1?

17 MR. NEUDECK: That's certainly a possibility.

18 MR. O'LAUGHLIN: Thank you for your time and  
19 patience. I greatly appreciate it. Hope it wasn't too  
20 redundant.

21 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

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RECROSS-EXAMINATION BY MR. RUBIN  
FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

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MR. RUBIN: Good morning, Mr. Neudeck. Jon Rubin for San Luis & Delta-Mendota Water Authority.

I just want to clarify one aspect of the cross-examination relating to your belief and Duck Slough.

I recall a question being asked by Mr. Herrick about seepage into Duck Slough, and it was your answer that if -- I believe it was your answer -- that if Duck Slough were leveed at Middle River and at Burns Cutoff, there would continue to be water in Duck Slough because of seepage; is that correct?

MR. NEUDECK: Yes. That's correct. That correctly states my testimony.

MR. RUBIN: And you believe that Duck Slough would have water in it under natural conditions with those levees in place because of seepage of water from the ground?

MR. NEUDECK: Correct.

MR. RUBIN: I have no further questions.

CO-HEARING OFFICER BAGGETT: Thank you. Anyone else? Any other parties? Hearing none. Ernie?

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QUESTIONS FROM BOARD AND STAFF

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WATER RESOURCE CONTROL ENGINEER MONA:

Mr. Neudeck, just to make things clear, for me anyway, based on your knowledge of what's going on out there, would it be correct to say that there's essentially two types of facilities used within the Roberts area to take water out of the meridian River or any other major course?

For instance, they're either using a pumping facility or a gravity diversion facility, is that correct?

MR. NEUDECK: That's correct.

WATER RESOURCE CONTROL ENGINEER MONA: And do you know whether or not there's ever been any gravity diversion facilities used prior to 1914 to take water out of the Middle River up this infamous Duck Slough?

MR. NEUDECK: We don't have record of that. But, you know, the -- there is some potential for that as we look at the Woods Robinson Vasquez facility.

As we sit there today, it looks like there is remnants of an old floodgate, but I don't have any records of that.

If the slough was there and it was leveed off,

1 the likeliness is a floodgate was placed in it to  
2 facilitate irrigation. But I have not put any testimony  
3 in to that extent. From that question, I'm just giving  
4 you my opinion, but I don't have any exhibits to prove  
5 that.

6 WATER RESOURCE CONTROL ENGINEER MONA: Do you  
7 know if there is any gravity diversion facilities being  
8 used now to divert water out of Middle River for use  
9 within the -- I guess the Middle Island, Roberts. Or  
10 are they all pumping diversion facilities?

11 MR. NEUDECK: Was that in reference to today?

12 WATER RESOURCE CONTROL ENGINEER MONA:  
13 Currently.

14 MR. NEUDECK: There -- there is today. They're  
15 not used as routinely because they're not as efficient.

16 The Woods Irrigation system still has a gravity  
17 feed, but it remains for the most part closed because  
18 it's a more efficient system by pumps. But it still  
19 exists.

20 WATER RESOURCE CONTROL ENGINEER MONA: So it's  
21 your testimony that prior to the construction of the  
22 Woods Robinson Vasquez diversion system which is a  
23 pumping diversion system, a canal, the property which is  
24 now known as Pak/Young was irrigated via gravity  
25 diversion?

1 MR. NEUDECK: Well --

2 WATER RESOURCE CONTROL ENGINEER MONA: With  
3 water that came out of Middle River?

4 MR. NEUDECK: It could have easily as well come  
5 from the Burns Cutoff side as well.

6 So I -- I don't have any direct evidence to  
7 demonstrate that there was a floodgate in the Middle  
8 River into Duck Slough. There is water -- we have  
9 evidence of water in Duck Slough. We do have evidence,  
10 clear evidence, of those floodgates being in Burns  
11 Cutoff. I don't have clear evidence of a floodgate in  
12 Middle River.

13 WATER RESOURCE CONTROL ENGINEER MONA: So  
14 there's no clear evidence then. Thank you.

15 CO-HEARING OFFICER HOPPIN: Mr. Neudeck, one  
16 more from me please.

17 You stated in relation to the Woods Cutoff  
18 floodgates that if the canal -- if the Duck Slough were  
19 in fact drained it could be recharged from seepage from  
20 high groundwater levels; Is that correct?

21 MR. NEUDECK: That's correct.

22 CO-HEARING OFFICER HOPPIN: And the quality of  
23 this water, would you suspect that it would be similar  
24 today to what it would have been in 1876? Is there  
25 anything that would affect a change in the quality of

1 that water?

2 MR. NEUDECK: Yeah, I believe there is. I mean  
3 the water that's coming down into the Delta has a higher  
4 salinity content. We tend to concentrate that in this  
5 region.

6 We -- you know, they have to top-irrigate and  
7 flood-irrigate to drive those salts out. So I would say  
8 it's higher saline content today than it was in 1875.  
9 If we could go back to 1875 --

10 CO-HEARING OFFICER HOPPIN: Are you talking  
11 about the surface water or the groundwater?

12 MR. NEUDECK: Both.

13 CO-HEARING OFFICER HOPPIN: Okay. I'm not  
14 trying to ask --

15 MR. NEUDECK: No, that's fine --

16 CO-HEARING OFFICER HOPPIN: I'm not trying to  
17 ask --

18 MR. NEUDECK: It was intended to speak to both.

19 CO-HEARING OFFICER HOPPIN: Okay.

20 MR. NEUDECK: I apologize.

21 CO-HEARING OFFICER HOPPIN: Then when they  
22 drained this land, when they started reclaiming this  
23 land in the 1800s, did they originally reclaim the land  
24 and provide drainage to lower the point of  
25 supersaturation, or were they doing salt control at that

1 time as well, either from -- obviously they had better  
2 water coming down -- no offense, Mr. O'Laughlin -- from  
3 the San Joaquin River than they have today, but there  
4 was still the influence, I would assume, of some tidal  
5 salts that were coming in.

6 So was the intent of reclamation, when it  
7 began, to lower the point of supersaturation or was it  
8 to manage salt?

9 MR. NEUDECK: No. Predominantly the prior. To  
10 lower the point of supersaturation to be able to  
11 commence working the ground so as to reclaim the ground  
12 to get it into a farmable condition.

13 CO-HEARING OFFICER HOPPIN: So it wasn't a salt  
14 management situation.

15 MR. NEUDECK: No.

16 CO-HEARING OFFICER HOPPIN: And you're saying  
17 that in these high connate soils there's static water at  
18 6 feet, something like that?

19 MR. NEUDECK: Well, yeah. It varies.

20 CO-HEARING OFFICER HOPPIN: But about?

21 MR. NEUDECK: Yeah. That's pretty low. Many  
22 cases -- many cases, it's four feet.

23 CO-HEARING OFFICER HOPPIN: Okay. What is  
24 the -- excuse me. Didn't mean to cut you off.

25 MR. NEUDECK: That's fine.

1 CO-HEARING OFFICER HOPPIN: So if you punched a  
2 hole at 4 feet, what would the pH be of that water today  
3 on the Pak/Young property?

4 MR. NEUDECK: I don't --

5 CO-HEARING OFFICER HOPPIN: Would it be usable  
6 water?

7 THE WITNESS: I'm going to defer. I really  
8 don't -- I'm going to need to defer that to Mr. Mussi,  
9 you know, who is our farming witness. I don't know.

10 CO-HEARING OFFICER HOPPIN: Would you say that  
11 that water would be part of what Mr. Nomellini describes  
12 as the Delta pool?

13 MR. NEUDECK: It's definitely part of the Delta  
14 pool, yes, without any question. I just don't know what  
15 the actual quality is.

16 I know Mr. Mussi, who's been a witness in this,  
17 has, you know, has definite records on that. But I  
18 don't.

19 CO-HEARING OFFICER HOPPIN: Thank you for your  
20 answer.

21 MR. NEUDECK: You're welcome.

22 CO-HEARING OFFICER BAGGETT: Any other  
23 questions?

24 MR. HERRICK: It's been a while, and I don't  
25 have my exhibit list in front of me, but I would move

1 that all the exhibits in the Pak and Young and Mussi  
2 matter presented by those individual parties be accepted  
3 into evidence.

4 CO-HEARING OFFICER BAGGETT: Objection?

5 MR. O'LAUGHLIN: Yeah. I'm going to move to  
6 strike the testimony of Mr. Neudeck in regards to the  
7 Delta pool.

8 Previously in the matter of Phelps, Ratto,  
9 Conn, and Silva the State Water Resources Control Board  
10 already made a factual and legal finding that in fact  
11 the Delta pool conferred absolutely no rights, and  
12 nothing that's been put in by Mr. Neudeck in this  
13 testimony is any different.

14 And not only that, that finding was upheld at  
15 the superior court and wasn't -- and actually I had to  
16 go back because I believe Mr. Nomellini is probably  
17 correct on this -- wasn't addressed at the appellate  
18 court.

19 But the reason it wasn't addressed was it  
20 wasn't raised on appeal, so since it wasn't raised on  
21 appeal it's law. So based on that, I would move to  
22 strike Mr. Neudeck's Delta pool testimony and his  
23 previous exhibits.

24 CO-HEARING OFFICER BAGGETT: Comments,  
25 Mr. Herrick?

1 MR. HERRICK: Respond to that?

2 As far as I know, the fact that there's a prior  
3 decision with -- prior decision that had testimony that  
4 was similar does not in any way confer the ability to  
5 strike the testimony as being somehow inappropriate or  
6 illegal.

7 I think Mr. Nomellini put it best that we hope  
8 the Board corrects its bad decision in the past, but  
9 there's nothing that prevents Mr. Neudeck from  
10 testifying, or even Mr. Nomellini, about the Delta pool  
11 concept.

12 There's no basis for striking it because it was  
13 similarly, partially, or even completely before the  
14 Board before and decided in that manner in one way.

15 There's no basis for that objection.

16 CO-HEARING OFFICER BAGGETT: Any other -- your  
17 objection is noted.

18 MR. O'LAUGHLIN: Thank you. That's all I  
19 wanted to hear. You're going to take it under  
20 submission, I assume?

21 CO-HEARING OFFICER BAGGETT: Yes, we will.  
22 And --

23 MR. O'LAUGHLIN: Now are we going to handle  
24 these objections and stuff similar to what we did in  
25 Woods, that at some point in time prior to the final

1 record being made you will make determinations of the  
2 evidence that has actually been admitted into evidence  
3 and actually --

4 CO-HEARING OFFICER BAGGETT: Correct.

5 MR. O'LAUGHLIN: Thank you.

6 CO-HEARING OFFICER BAGGETT: Sooner than later,  
7 I would hope.

8 Any other objections?

9 MR. RUBIN: Yes, Hearing Officer Baggett. I'm  
10 going to object to Exhibit 1, figure 9 for lack of  
11 foundation.

12 CO-HEARING OFFICER BAGGETT: What's --

13 MR. RUBIN: Exhibit 1, figure 10 for lack of  
14 foundation.

15 Exhibit 1, figure 12 for lack of foundation.

16 Exhibit 1, figure 16 -- excuse me -- 15 for  
17 lack of foundation.

18 Exhibit 1, figure 16 for lack of relevance.

19 Exhibit 1, figure 17 for lack of foundation.

20 And join in Mr. O'Laughlin's objections.

21 CO-HEARING OFFICER BAGGETT: Mr. Herrick, do  
22 you have any -- it appears to be most of the maps  
23 submitted in this proceeding by your witness.

24 MR. HERRICK: Yes. If you want me to go  
25 through each one of them slowly, I will. However,

1 Mr. Lajoie -- I believe the objection to figures 9, 10,  
2 12, 15, 16, and 17 have Mr. Lajoie. That's what I wrote  
3 down.

4 Mr. Lajoie testified fully the sources and  
5 basis for everything he provided. Counsel is  
6 perfectly -- counsel had the opportunity to  
7 cross-examine him or ask him to provide any maps upon  
8 which he relied.

9 We've offered in the past to provide those.

10 So I don't see the basis. I think the Board  
11 should give them the weight it feels proper. But there  
12 seems to be no doubt in my mind that Mr. Lajoie's  
13 testimony was very cogent and specifically cited to all  
14 of his sources.

15 CO-HEARING OFFICER BAGGETT: Any other  
16 comments?

17 Mr. Rubin, we can rule on that one. Take the  
18 exhibits as objected to. We'll note the objection for  
19 the record but allow the submission of those exhibits  
20 into the record and give the weight that the Board feels  
21 appropriate.

22 Regarding Mr. O'Laughlin's objection, we'll  
23 rule on that later, take that under submission.

24 Anything else?

25 MR. ROSE: Hearing Officer Baggett, if now's

1 the appropriate time, the Prosecution Team previously  
2 offered Pak and Young exhibits -- or Exhibit Pak and  
3 Young 14 and 15 that we added which were clarified  
4 versions of the maps.

5 If now is the appropriate time, I'd also like  
6 to move those into evidence in the Pak and Young  
7 proceeding.

8 CO-HEARING OFFICER BAGGETT: So we've  
9 admitted -- we've concluded with the case-in-chief of  
10 Mr. Herrick. That ruling stands.

11 And now Prosecution has two exhibits. Any  
12 objection?

13 MR. HERRICK: No. Those are the ones that were  
14 recently e-mailed as clarifications?

15 MR. ROSE: No. Recently, we e-mailed exhibits  
16 that were clarifications for the Mussi matter.

17 These were two maps that are clarified versions  
18 of the 1941 Woods map that I previously discussed in the  
19 Pak and Young proceeding and labeled as Prosecution Team  
20 Exhibits 14 and 15.

21 MR. HERRICK: Thank you. I have no objection  
22 to those.

23 MR. O'LAUGHLIN: We have no objection.

24 CO-HEARING OFFICER BAGGETT: Admitted. Thank  
25 you.

1 (Whereupon Prosecution Team Exhibits 14

2 and 15 were accepted in evidence.)

3 CO-HEARING OFFICER BAGGETT: That concludes the  
4 case-in-chief.

5 MR. O'LAUGHLIN: Do you want me to wait until  
6 we're done with our case then move to get those  
7 exhibits -- those schematics entered? I'd be happy to  
8 do that. We can wait.

9 CO-HEARING OFFICER BAGGETT: Yeah.

10 MR. O'LAUGHLIN: We have to put Mr. Wee on  
11 still.

12 CO-HEARING OFFICER BAGGETT: Let's wait and do  
13 them all at once.

14 So we're down to the final case-in-chief.  
15 Mr. O'Laughlin?

16 MR. O'LAUGHLIN: Thank you.

17 CO-HEARING OFFICER BAGGETT: Is your case going  
18 to be fairly brief, or are you going to -- your witness.

19 MR. O'LAUGHLIN: My witness will be done in  
20 very short order.

21 CO-HEARING OFFICER BAGGETT: Okay. Let's do  
22 that, then we'll take a break and come back for cross.

23 MR. O'LAUGHLIN: Okay.

24 CO-HEARING OFFICER BAGGETT: Okay.

25 WATER RESOURCE CONTROL ENGINEER MONA: Is Wee

1 your only witness? Will he be your only witness for  
2 this?

3 MR. O'LAUGHLIN: On direct, that will be  
4 correct.

5 CO-HEARING OFFICER BAGGETT: Very good.

6 MR. O'LAUGHLIN: Not for rebuttal.

7 CO-HEARING OFFICER BAGGETT: Let's move. Let's  
8 complete the direct.

9 SENIOR STAFF COUNSEL HEINRICH: So on direct,  
10 you're not going to be calling Philip Johnson or David  
11 Goldhamer?

12 MR. O'LAUGHLIN: No, I'm not.

13 CO-HEARING OFFICER BAGGETT: Okay. Proceed.

14 MR. O'LAUGHLIN: Thank you.

15 --o0o--

16 STEPHEN R. WEE

17 Called by MODESTO IRRIGATION DISTRICT

18 DIRECT EXAMINATION BY MR. O'LAUGHLIN

19 --o0o--

20 MR. O'LAUGHLIN: Mr. Wee, were you present and  
21 did you take the oath in this matter?

22 MR. WEE: I did.

23 MR. O'LAUGHLIN: And you have prepared a  
24 testimony for this proceeding; is that correct?

25 MR. WEE: Yes, I have.

1 MR. O'LAUGHLIN: Okay. And you've drafted that  
2 and submitted that, and that's a true and correct copy  
3 that you submitted to the State Water Resources Control  
4 Board of your testimony; is that correct?

5 MR. WEE: Yes, it is.

6 MR. O'LAUGHLIN: We have no further testimony.  
7 We're not going to summarize it, and it's pretty  
8 straightforward.

9 He's available for direct, or we can break for  
10 lunch now and come back and do cross.

11 Whatever your pleasure is.

12 CO-HEARING OFFICER BAGGETT: Well, that is the  
13 direct, so we're up for cross, correct?

14 MR. O'LAUGHLIN: That is correct.

15 CO-HEARING OFFICER BAGGETT: Does the  
16 Prosecution Team have a lengthy cross?

17 MR. ROSE: I don't have any cross for Mr. Wee.

18 CO-HEARING OFFICER BAGGETT: I guess Mr. Rubin,  
19 no cross? So it's Mr. Herrick.

20 MR. HERRICK: We've got some cross. I would  
21 suggest we just break for lunch.

22 CO-HEARING OFFICER BAGGETT: Break for lunch  
23 and come back. We're off the record.

24 (Lunch recess)

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AFTERNOON SESSION

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CO-HEARING OFFICER BAGGETT: We're back for cross-examination by Mr. Herrick.

--o0o--

CROSS-EXAMINATION BY HERRICK  
FOR WOODS IRRIGATION COMPANY

--o0o--

MR. HERRICK: Thank you. John Herrick, once again for Pak and Young. Correct? Mr. Wee, this will be very brief.

Your testimony describes the relevant certificates of purchase with regard to the Pak and Young parcel; is that correct?

MR. WEE: That is correct.

MR. HERRICK: And is it your opinion that a certificate of purchase passes title to land?

MR. WEE: It gave the person who was issued the certificate of purchase a transferable interest in the property in that they put down a cash payment of a certain percentage of the price which then they had to fulfill other conditions in order to obtain final title.

MR. HERRICK: Isn't it true that the title to the land remained with the government though during the certificate of purchase up and until any patent was

1 eventually issued?

2 MR. WEE: As I said, a certificate of purchase  
3 gave an individual rights in the property that if they  
4 fulfilled the conditions that were outlined in the State  
5 act governing swamp and overflow land that they had the  
6 right to obtain title to the land.

7 And it was also a transferable interest that  
8 could pass to other parties.

9 MR. HERRICK: Yes, but just to make sure I  
10 understand your answer: Whatever the interest that the  
11 purchaser of the certificate of purchase had, title to  
12 the land remained with the government. Is that not  
13 correct?

14 MR. WEE: I would -- a patent was later issued,  
15 if that's what you're getting at.

16 MR. HERRICK: Is it your opinion the patent is  
17 what transferred title to the land from the government?  
18 Or the certificate of purchase? Or something else.

19 MR. WEE: I really don't know how to answer  
20 that other than the way I've answered it already.

21 MR. HERRICK: Okay. Now in your testimony, you  
22 discuss connections with the property to such waterways  
23 as Burns Cutoff, San Joaquin River, Middle River, and  
24 Whiskey Slough; is that correct?

25 MR. WEE: Yes.

1           MR. HERRICK:  And you do not discuss any  
2 connection of the property to Duck Slough; is that  
3 correct?

4           MR. WEE:  That is correct.

5           MR. HERRICK:  And is that based on an  
6 investigation done by you that Duck Slough did not abut  
7 the property?

8           MR. WEE:  That is correct.

9           MR. HERRICK:  And in your investigation of that  
10 issue of whether or not Duck Slough abutted the  
11 property, did you locate any maps that did show a Duck  
12 Slough line going down to the current property location?

13           MR. WEE:  Not -- no, not to the current  
14 property location.

15           MR. HERRICK:  So you didn't have -- I don't  
16 mean to the current parcel.  I just --

17           MR. WEE:  Oh.

18           MR. HERRICK:  In other words, now.

19           Did you look -- let me restate.

20           Did you find any historic maps that show Duck  
21 Slough extending to where the property is now but not  
22 now extending to that?

23           MR. WEE:  If you're asking me -- I think you're  
24 asking me that in the historic period have I ever seen a  
25 map that shows Duck Slough extending to the Pak/Young,

1 where the Pak/Young parcel is today? The answer would  
2 be no.

3 MR. HERRICK: Okay. And without mixing up the  
4 records, in your rebuttal testimony in the Woods matter,  
5 you didn't note a map that does show it going that far?

6 My recollection was your testimony was you  
7 decided that the maps that didn't show it were to be  
8 given more weight than the map that showed it.

9 MR. O'LAUGHLIN: Well, I'm going to object.  
10 That's vague and ambiguous. That map, this map, what  
11 map?

12 I mean be specific about what map we're talking  
13 about. And plus it's testimony from another hearing.

14 MR. HERRICK: Oh, we couldn't have that put  
15 into this hearing.

16 CO-HEARING OFFICER BAGGETT: Okay, sustained.

17 MR. HERRICK: Is that a joke?

18 CO-HEARING OFFICER BAGGETT: Can you rephrase?

19 MR. O'LAUGHLIN: I don't mind that, but you've  
20 got to get to the specific testimony.

21 CO-HEARING OFFICER BAGGETT: Okay. I've  
22 already --

23 MR. HERRICK: Mr. Wee --

24 CO-HEARING OFFICER BAGGETT: -- sustained  
25 your -- can you state which maps, Mr. Herrick?

1           MR. HERRICK:  Mr. Wee, do you recall the State  
2 Engineer's map showing topographical and irrigation  
3 features?

4           MR. WEE:  Yes, I do.

5           MR. HERRICK:  And does not that map show a Duck  
6 Slough line extending down to an area which includes the  
7 current Pak/Young property?

8           MR. WEE:  In my opinion, it does not.  And I  
9 would even say that the line that exists there doesn't  
10 extend that far anyway even if I thought it was Duck  
11 Slough.

12           MR. HERRICK:  So you're saying that the line  
13 didn't extend that far even though you didn't think that  
14 line was Duck Slough?

15           MR. WEE:  I'm saying that I do not think that  
16 line was Duck Slough except for the short little segment  
17 that is labeled Duck Slough.

18           And I said that the line itself that -- the --  
19 what I would call the levee line, that line as depicted  
20 on the map I don't think reaches far enough inland to  
21 reach the Pak/Young parcel.

22           MR. HERRICK:  Okay.

23           Mr. Wee, do you know how and where the drainage  
24 necessary for reclaiming the Pak/Young property was  
25 located?

1           MR. WEE: I don't think I quite understand your  
2 question.

3           MR. HERRICK: You would agree, would you not,  
4 that at some point Lower Roberts was reclaimed for  
5 agricultural use? Generally, agricultural use?

6           MR. WEE: Yes.

7           MR. HERRICK: And that would entail the  
8 drainage of those swamp and overflow lands, correct?

9           MR. WEE: Yes.

10          MR. HERRICK: And do you know what facilities  
11 were used to drain the water from the Pak/Young land so  
12 that it would be reclaimed?

13          MR. WEE: I've never seen anything that is  
14 labeled as drainage on that property. I think the first  
15 time I noticed anything that looks like a ditch or  
16 anything is on a map in the 1920s.

17          MR. HERRICK: Is it your contention that that  
18 land was swamp and overflow through the '20s?

19          MR. WEE: I don't know.

20          MR. HERRICK: Okay. And lastly, Mr. Wee, I  
21 just want to go through your understanding of riparian  
22 connections of land based on your conclusions in your  
23 testimony that this particular property was severed from  
24 any riparian connection as of the -- I guess the  
25 November 6, 1896 parcel -- or, excuse me -- deed.

1           Let's take a few hypotheticals, if you don't  
2 mind. And you can object or add things to them as we go  
3 forward. I'm not trying to couch them in tricky terms.  
4 I just want to make sure that they're clear and basic so  
5 I can go through a number of them.

6           If there were a large natural depression in  
7 Middle Roberts that was filled with water, absent  
8 anything else or any future happenings, would you say  
9 that land abutting that large depression filled with  
10 water had riparian rights to the water?

11           MR. WEE: I suppose my understanding of  
12 riparian rights would be that you would need to have  
13 some surface manifestation like a lake which you could  
14 be riparian to.

15           MR. HERRICK: And in what I just described,  
16 that would constitute some sort of lake, would it not?  
17 I mean I'm just saying a natural depression which is  
18 full of water.

19           MR. WEE: Well, it could.

20           MR. HERRICK: What would the circumstances be  
21 where it would not?

22           MR. WEE: If it was something that was  
23 temporary, filled seasonally, dry other parts of the  
24 year.

25           MR. HERRICK: Would it confer a riparian right

1 while it was full?

2 MR. WEE: I think that's probably a legal  
3 question that I can't answer.

4 MR. HERRICK: If you had an unnatural  
5 depression on Middle Roberts Island that somebody had  
6 dug out and it filled with water, in your opinion would  
7 the lands abutting that have any sort of riparian right  
8 to that water?

9 MR. WEE: No.

10 MR. HERRICK: And why not?

11 MR. WEE: Because it wouldn't have been a  
12 natural body of water.

13 MR. HERRICK: Does it make a difference to you  
14 if the seepage into the unnatural excavation or  
15 depression naturally occurs without any outside inputs  
16 by the farmers or anybody else?

17 MR. WEE: Again, if you're talking about a body  
18 of water that was there all the time, then I would think  
19 that someone could be riparian to it.

20 MR. HERRICK: And are you familiar with the  
21 concept that manmade channels over time can be  
22 considered riparian depending on the circumstances?

23 MR. WEE: I'm not familiar with that notion,  
24 no.

25 MR. HERRICK: Now, would your answers be any

1 different if the feature I'm describing was narrow, not  
2 a big wide open body but a narrow one? Let's just say  
3 20 feet wide, but long. Would your answer change  
4 because of the configuration of the shape of the  
5 feature?

6 MR. WEE: If it's a natural body of water  
7 that's surface manifestations and is there year round, I  
8 would say that it would -- could be classified as a  
9 small lake, lake nevertheless.

10 MR. HERRICK: And again, then there could be  
11 riparian rights attaching to that with your  
12 qualification that if it were dry sometimes there might  
13 not be a right as opposed to if it were filled there  
14 might be a right; is that correct?

15 MR. WEE: As I've already said a couple of  
16 times, if the body of water was a lake, as I understand  
17 it, then I think properties that were adjacent to it  
18 could be riparian.

19 MR. HERRICK: Now let's go upstream for the  
20 next hypothetical. Let's just say we have a small  
21 tributary stream to a river, and that tributary enters  
22 it somewhere in the foothills.

23 The tributary is fed by, let's just say, snow  
24 melt or spring or a combination but it always runs. I'm  
25 trying to make the distinction between a periodic stream

1 and a continuous stream flow.

2 If somebody puts a dam at the mouth of that  
3 stream where it enters the main river, does that affect  
4 the riparian rights of the people abutting that small  
5 stream?

6 MR. WEE: What do you mean by affect their  
7 rights?

8 MR. HERRICK: Since the small stream is no  
9 longer connected to the major one, are the people along  
10 that small stream, are their rights affected?

11 MR. O'LAUGHLIN: I'm sorry. I didn't follow  
12 that hypothetical.

13 Are you saying that there's a small stream that  
14 feeds a larger -- a tributary to a larger river, and  
15 before the tributary gets to the river a dam's put on  
16 it?

17 MR. HERRICK: Yes.

18 MR. O'LAUGHLIN: Okay. So then you're saying  
19 that on the tributary, since there is a dam, are the  
20 rights along the river affected? The tributary.

21 MR. HERRICK: That is my question.

22 MR. O'LAUGHLIN: Okay. I got it.

23 MR. WEE: I would think that the people that  
24 were tributary to the stream, the small stream as you  
25 describe it, would continue to have a riparian right to

1 that stream.

2 MR. HERRICK: Now I want to move the  
3 hypothetical down on to Roberts Island. And let's say  
4 we have a slough that used to be connected to one of the  
5 major channels, and somebody puts a dam across the mouth  
6 of that slough where it connected to the major channel.

7 If water is still in that slough, are the lands  
8 along that slough still riparian in your opinion?

9 MR. WEE: If you could classify the slough as a  
10 stream with surface flow, then I think that you -- that  
11 people who are along that stream could be riparian.

12 MR. HERRICK: Does it have to have surface  
13 flow, or could it be a -- could they have created some  
14 sort of lake by damming it?

15 MR. WEE: Well, my understanding of the  
16 riparian right on a stream is that you have to have  
17 surface flow.

18 MR. HERRICK: Now I believe from the earlier  
19 testimony we understand that at some time in the late  
20 1800s Duck Slough was dammed off and two floodgates were  
21 installed. Do you recall that earlier testimony today?

22 MR. WEE: Yes.

23 MR. HERRICK: And in those circumstances,  
24 apparently the floodgates were initially used for the  
25 drainage of some parts of Roberts Island; is that

1 correct?

2 MR. WEE: The floodgates that were installed in  
3 1876 were for drainage; that's correct.

4 MR. HERRICK: Okay. Now, do you have an  
5 opinion as to whether or not seepage water would  
6 continue to flow into Duck Slough even after the dam and  
7 floodgates were installed?

8 MR. WEE: From -- I don't have an opinion about  
9 that myself. I'm not a hydrologist. I've heard  
10 testimony about it, but I don't have my own independent.

11 MR. HERRICK: You're not familiar with the  
12 groundwater levels?

13 MR. WEE: That's correct.

14 MR. HERRICK: You're not familiar with the  
15 elevation of the land pre-reclamation?

16 MR. WEE: In a general way, yes. But.

17 MR. HERRICK: If water did seep into this  
18 channel -- again, these are hypotheticals -- if water  
19 did seep into these channels and periodically drained  
20 into Burns Cutoff on the low tides -- in other words,  
21 the flap gates being used as described -- wouldn't that  
22 constitute a flowing stream, the slough as it  
23 periodically flowed down slope into Burns Cutoff?

24 MR. WEE: Well, I think it's -- as I understand  
25 it, again, it's not flowing. It's influenced by tidal

1 action. So I don't know if that's -- if that can be  
2 categorized as a flowing stream or not.

3 I mean the water is rising and lowering with  
4 the tides, as I understand it. But you'd have to have a  
5 channel there, and my understanding of Duck Slough is  
6 that there was a very short channel, only extended a  
7 mile or two inland in 1875 before they dammed it, so  
8 that would be the full extent of it.

9 If it -- if there was a riparian right, so  
10 stated with Duck Slough, it would be limited to that  
11 one, two miles that existed.

12 MR. HERRICK: And that's not quite the answer  
13 to the question. I was focusing on not the extent of  
14 any lands that may be riparian, but whether or not the  
15 operation of those floodgates would turn the slough  
16 which used to go back and forth based on the tide into a  
17 channel which now only flowed one direction through the  
18 floodgates during low tide. That was my question.

19 MR. WEE: And again, if it's -- it's a  
20 difficult question for me to answer because I'm not sure  
21 that I understand the hydraulics and the dynamics of  
22 this system.

23 I mean from my understanding is that they cut  
24 the stream off so that there was no surface flow coming  
25 in, and it was only draining water out. And if that --

1 that's what I understand the situation was.

2 And whether someone can be riparian to that  
3 stream or not, I am not sure that I can, you know,  
4 answer that question. From a legal standpoint,  
5 certainly not.

6 MR. HERRICK: Okay. I was just trying to get  
7 to that very point that you said, the drainage was  
8 flowing one direction.

9 And I was trying to determine whether or not  
10 under my hypothetical if you had a slough that used to  
11 go both directions, now is dammed off and operated so it  
12 only flows in one direction, whether or not that somehow  
13 affected lands riparian to that stream -- to that  
14 slough, excuse me. And if you don't know --

15 MR. WEE: Well -- yeah, I think that I answered  
16 it the best I can.

17 MR. HERRICK: Very last question. Just a  
18 couple. In your testimony, you do note language from  
19 deeds -- and I'm just going to quote; it's in your  
20 testimony:

21 Together with all and singular the  
22 tenements, hereditaments and  
23 appurtenances thereunto belonging, or in  
24 anywise appertaining, and the reversion  
25 and reversions, remainder and remainders,

1 rents, issues, and profits thereof.

2 Do you recall that language from the deed?

3 MR. WEE: Yes, I've seen it frequently.

4 MR. HERRICK: And is it your position that that  
5 language does not preserve a riparian right?

6 MR. WEE: That's correct.

7 MR. HERRICK: Is that based on your  
8 understanding of any California cases?

9 MR. WEE: I couldn't cite the cases for you,  
10 but I've understood that for a long time, that that  
11 language is not a specific reservation for purposes of  
12 establishing a riparian right.

13 MR. HERRICK: And without being too detailed,  
14 do you know when that sort of decision would have  
15 occurred? In other words, we've got lots of  
16 transactions in California history -- well, let me start  
17 over.

18 Much of California's water law was developed  
19 through legal action which resulted in decisions through  
20 the courts. Is it your understanding that any decision  
21 with regards to that language was done after 1900,  
22 before 1914, or do you have a recollection?

23 MR. WEE: I don't recall when.

24 MR. HERRICK: That's all I have. Thank you.

25 CO-HEARING OFFICER BAGGETT: Thank you. Does

1 South Delta --

2 MR. RUIZ: No cross.

3 CO-HEARING OFFICER BAGGETT: San Joaquin?

4 MS. GILLICK: No cross.

5 CO-HEARING OFFICER BAGGETT: Ernie? Dana?

6 --o0o--

7 QUESTIONS FROM BOARD STAFF

8 --o0o--

9 SENIOR STAFF COUNSEL HEINRICH: Mr. Wee, I have  
10 a question about your Exhibit MSS Exhibit 2D. That's a  
11 map that depicts a parcel that was conveyed in 1896.

12 My question has to do with the text, the red  
13 text in the box you have on that map. I assume that  
14 that is something that you wrote.

15 And that text indicates that this conveyance  
16 severed contiguity with all natural waterways except for  
17 Whiskey and Trapper Sloughs, but those waterways are not  
18 natural.

19 My question is about the statement that those  
20 waterways are not natural, and in particular Trapper  
21 Slough. Can you elaborate on that?

22 MR. WEE: Well, a portion of both of those  
23 sloughs is natural. But in the -- and what we're seeing  
24 here is a base map. It's a very modern base map,  
25 probably 1990s or so.

1           When they -- when Lower and Upper Jones Tracts  
2 were reclaimed, those sloughs were extended down to  
3 where the railroad went through. And so there's an  
4 extension -- an unnatural artificial extension of  
5 Trapper Slough to the northeast as well as Whiskey  
6 Slough to the southeast.

7           SENIOR STAFF COUNSEL HEINRICH: And that was in  
8 the late 1800s?

9           MR. WEE: That -- those extensions occurred  
10 over a period of time. Certainly they were in place by  
11 1904, I believe, would be the date of reclamation on  
12 those two islands, so it would have had to have been  
13 completed by then.

14          SENIOR STAFF COUNSEL HEINRICH: And Trapper  
15 Slough at that time was connected to Middle River; is  
16 that right?

17          MR. WEE: That's correct.

18          SENIOR STAFF COUNSEL HEINRICH: Do you know  
19 what it looks like today, Trapper Slough?

20          MR. WEE: I've never seen it physically, no.

21          SENIOR STAFF COUNSEL HEINRICH: Do you know  
22 whether it's been filled in or still might be there?

23          MR. WEE: My only knowledge of it would be from  
24 recent maps, USGS maps, and it's present on those.

25          SENIOR STAFF COUNSEL HEINRICH: It is present?

1 MR. WEE: It is.

2 SENIOR STAFF COUNSEL HEINRICH: Do you know  
3 whether what you're characterizing as an artificial  
4 extension still exists on those USGS maps?

5 MR. WEE: Yes.

6 SENIOR STAFF COUNSEL HEINRICH: Thank you.

7 CO-HEARING OFFICER BAGGETT: Charlie, any  
8 questions? No? Any redirect, recross?

9 MR. O'LAUGHLIN: So we'd like to move into  
10 evidence MSS-1, and then we're going to move into  
11 evidence exhibits -- the schematics, 5, 6, and 7.

12 CO-HEARING OFFICER BAGGETT: Any objection?

13 MR. HERRICK: Mr. Chairman, for Pak/Young and  
14 Mussi, it's my understanding that the butcher paper  
15 exhibits MSS, I believe, 5, 6, and 7, Mr. O'Laughlin has  
16 labeled one side of the levees around a Duck Slough  
17 feature as High Ridge Levee and other side natural  
18 levee.

19 I believe the cross-examination on those things  
20 established from Mr. Neudeck that it wasn't clear that  
21 one side was natural and one side was not or one side  
22 was in existence and not.

23 So I think they're misleading. Someone  
24 reviewing the record later will look at that and say,  
25 ah, High Ridge Levee was here in relation to Duck Slough

1 when the testimony evidence doesn't show that.

2 Based on that, I would object to them going in.  
3 The testimony is very clear, but the maps as part of the  
4 record would be a misrepresentation of the answers on  
5 those maps.

6 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin?

7 MR. O'LAUGHLIN: Well, that's a fascinating  
8 statement.

9 Mr. Neudeck testified, agreed with my drawings,  
10 said that from a schematic standpoint they represented  
11 what he thought -- believed out there.

12 I know on redirect Mr. Herrick went in a  
13 different direction with where High Ridge Levee crossed  
14 over and became a natural slough or unnatural slough.  
15 Can't really tell from what that testimony was all  
16 about.

17 In fact, I think the record's perfectly clear,  
18 and those should go in as part of the testimony;  
19 otherwise it goes out and it has no explanation at all.

20 And you can decide for yourself what the  
21 testimony was by Mr. Neudeck. That's your job, not  
22 ours.

23 CO-HEARING OFFICER BAGGETT: Mr. Herrick, do  
24 you have any final comment?

25 MR. HERRICK: I have no further comment.

1 CO-HEARING OFFICER BAGGETT: Okay. I think  
2 they should be admitted for not the accuracy of the map  
3 but to make the testimony more understandable on the  
4 record.

5 SENIOR STAFF COUNSEL HEINRICH: Point of  
6 clarification, if I may, Mr. Baggett and Mr. O'Laughlin.

7 Were you just moving into evidence your  
8 Exhibit 1, 1A through 1J? Or did you also intend to  
9 move your Exhibits 2, 3, and 4 series?

10 MR. O'LAUGHLIN: Oh, yes. All of Mr. Wee's  
11 testimony. Yes. I'm sorry. Did I misspeak?

12 SENIOR STAFF COUNSEL HEINRICH: I'm not sure.

13 CO-HEARING OFFICER BAGGETT: 2 and 3 wasn't  
14 Mr. Wee's testimony. Mr. Johnson and --

15 MR. O'LAUGHLIN: No. 3 is not in, but yes, all  
16 of 1 and all of 2. That is correct.

17 The others don't come in. 5, 6 and 7. Thank  
18 you for catching the 2.

19 CO-HEARING OFFICER BAGGETT: Okay. Admitted.

20 (Whereupon Exhibits MSS-1 and MSS-2 were  
21 accepted in evidence.)

22 CO-HEARING OFFICER BAGGETT: Thank you. So  
23 that concludes Pak/Young.

24 Mussi, et al. Do we have a balance of a  
25 case-in-chief? I think the case-in-chief for Mussi's

1 been completed, but the Prosecution hasn't.

2 MR. ROSE: Correct. We have not put on our  
3 case-in-chief for Mussi yet.

4 MR. O'LAUGHLIN: And we have not put our  
5 case-in-chief for Mussi yet either.

6 CO-HEARING OFFICER BAGGETT: Right.

7 MR. O'LAUGHLIN: That would just be Mr. Wee  
8 again.

9 CO-HEARING OFFICER BAGGETT: Okay. So let's  
10 proceed. Prosecution, you're up.

11 MS. GILLICK: Chairman Baggett, I'm sorry.  
12 Just procedurally, you indicated the Pak/Young matter  
13 would be closed.

14 I do want to raise an issue in allowing or  
15 taking judicial notice of the cross-examination of  
16 Mr. Neudeck.

17 I believe in order to have a complete record,  
18 since the cross-examination of Mr. Neudeck is in, then  
19 the redirect of Mr. Neudeck and any other  
20 cross-examination should also be in because the purpose  
21 of redirect is to --

22 CO-HEARING OFFICER BAGGETT: Okay.

23 MS. GILLICK: -- follow up on  
24 cross-examination, and in order to be complete and  
25 explain that, it should be in as well.

1 CO-HEARING OFFICER BAGGETT: Is there any  
2 objection? Okay. Then we will get the page numbers, I  
3 guess, of the transcripts and include all redirect and  
4 recross.

5 Thank you. With that, Mr. Rose.

6 --o0o--

7 CHARLES ARNOLD

8 MARK STRETARS

9 Called by PROSECUTION TEAM

10 DIRECT EXAMINATION BY MR. ROSE

11 --o0o--

12 MR. ROSE: Obviously, there's no need for me to  
13 repeat my opening statement since it's exactly the same  
14 as it was for Pak and Young, so I'll just begin right  
15 away with my witnesses.

16 And as briefly as possible, I'll try not to  
17 repeat much that we did in the Pak and Young matter, but  
18 since I do have Mr. Arnold here who is not participating  
19 in that, I will go over some of the same things.

20 Will you please state your names and places of  
21 employment for the record?

22 MR. ARNOLD: Charles Arnold with the Division  
23 of Water Rights.

24 MR. STRETARS: Mark Stretars with the Division  
25 of Water Rights.

1           MR. ROSE:  And you submitted copies of your  
2 resumes for these proceedings?  
3           MR. ARNOLD:  Yes, I have.  
4           MR. STRETARS:  Yes, I have.  
5           MR. ROSE:  Are those resumes still current and  
6 accurate?  
7           MR. ARNOLD:  Yes, it is.  
8           MR. STRETARS:  Yes, it is.  
9           MR. ROSE:  Have you reviewed your written  
10 testimony for this hearing?  
11          MR. ARNOLD:  Yes, I have reviewed the  
12 testimony.  
13          MR. STRETARS:  I have.  
14          MR. ROSE:  Would you say that it is true and  
15 accurate?  
16          MR. ARNOLD:  Yes.  
17          MR. STRETARS:  Yes, I would.  
18          MR. ROSE:  Is there anything you'd like to  
19 correct from your written testimony?  
20          MR. ARNOLD:  No.  
21          MR. STRETARS:  No, not at this time.  
22          MR. ROSE:  And just in case there is any  
23 question, you were both here and took the oath at the  
24 beginning of these proceedings?  
25          MR. STRETARS:  That's correct.

1 MR. ARNOLD: Yeah, I took the oath.

2 MR. ROSE: Thank you. Just wanted to make  
3 sure.

4 Mr. Arnold, briefly, what information led you  
5 to issue the Draft Cease and Desist Order at issue here?

6 MR. ARNOLD: Well, the Division issued the  
7 Cease and Desist Order.

8 MR. ROSE: I'm sorry. For your part in the  
9 preparation of that, what information led you to  
10 recommend that issuance?

11 MR. ARNOLD: We didn't have sufficient  
12 information for a basis of right, evidence of basis of  
13 right.

14 MR. ROSE: Were materials submitted to you by  
15 the Mussis in this proceeding or prior to this  
16 proceeding? Did you receive any materials submitted by  
17 the Mussis?

18 MR. ARNOLD: Just a Statement of Water  
19 Diversion and Use, just based on my recollection.

20 MR. ROSE: You just mentioned that the Draft  
21 Cease and Desist Order was based on not having any  
22 evidence supporting a basis of right.

23 Did you look only at material submitted by the  
24 Mussis in reaching that conclusion?

25 MR. ARNOLD: Well, we reviewed maps and aerials

1 and general information that's available out there to  
2 make our determination.

3 MR. ROSE: Have you received any additional  
4 information since the Draft Cease and Desist Order was  
5 issued?

6 MR. ARNOLD: Yes.

7 MR. ROSE: And has any of that subsequently  
8 received information changed your mind about the  
9 conclusions you made in issuing the Draft Cease and  
10 Desist Order?

11 MR. ARNOLD: No, it did not.

12 MR. ROSE: Mr. Stretars, a few questions very  
13 briefly. What's your position in relation to Mr. Arnold  
14 in the Division?

15 MR. STRETARS: I am Mr. Arnold's immediate  
16 supervisor.

17 MR. ROSE: Did you review the Draft Cease and  
18 Desist Order prior to issuance?

19 MR. STRETARS: Yes, I did.

20 MR. ROSE: Did you agree with that order?

21 MR. STRETARS: I did.

22 MR. ROSE: Have you seen the additional  
23 information that was submitted after the draft order was  
24 issued?

25 MR. STRETARS: Yes, I reviewed that

1 information.

2 MR. ROSE: And do you agree with Mr. Arnold's  
3 conclusions regarding that additional information?

4 MR. STRETARS: I do.

5 MR. ROSE: Again, very briefly, what's the  
6 Division's process for -- actually, I don't think we  
7 need to go through that again.

8 Do you look into the reliability of information  
9 submitted by parties?

10 MR. STRETARS: We do.

11 MR. ROSE: And how do you weigh that  
12 information?

13 MR. STRETARS: It's weighed in connection with  
14 the information we've gathered and kind of put all  
15 together in one big package to see, you know, how it  
16 falls out. Basically we have various levels.

17 If it's documented evidence, picks up a little  
18 bit heavier value, I would say, as opposed to  
19 hearsay-type information.

20 But we do weigh it all and evaluate it before  
21 we come to the conclusion.

22 MR. ROSE: Thank you. I don't have any other  
23 questions at this point.

24 CO-HEARING OFFICER BAGGETT: Cross-examination?  
25 Mr. Herrick?

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CROSS-EXAMINATION BY MR. HERRICK  
FOR RUDY MUSSI, TONI MUSSI  
AND LORY C. MUSSI INVESTMENT LP

--o0o--

MR. HERRICK: Once again, John Herrick for  
Mussi.

Gentlemen, these are just general questions.  
It doesn't matter who answers them. Sorry if I'm not  
being specific to the person.

Is it correct to say that your conclusions in  
your testimony are that as of at least 1911 there's  
evidence to support a conclusion that Duck Slough  
existed alongside the property?

MR. ARNOLD: Yeah. I think that's what we said  
in our testimony, that we believe that waterway did  
exist up to that time.

MR. HERRICK: And part of your conclusion was  
based on your Exhibit PT-09 which is a map; is that  
correct?

MR. ARNOLD: I've got to recall PT-09. Yes,  
exactly.

MR. HERRICK: And can you give us any  
additional information on this map? It's labeled as  
1870 Tidal Map. Is there more of the map that has a key

1 or legend on it somewhere?

2 MR. ARNOLD: Yeah, that's a topographic base  
3 map. There's 26 of those for the State of California  
4 that were created and submitted apparently to the  
5 Secretary of State with plans.

6 And I received that from the State Archives  
7 Library. And they dated it, the whole series, 1866 to  
8 1877, and topographic maps for the entire state.

9 That's just one small section of the whole set.

10 MR. HERRICK: And the feature designated as  
11 Duck Slough, or Duck SL, appears to extend from Burns  
12 Cutoff all the way to Middle River; is that correct?

13 MR. ARNOLD: The waterway is designated Duck  
14 Slough there in the northern portion. Waterway, it  
15 looks like it connects all the way down, yes.

16 MR. HERRICK: And this is -- this -- to your  
17 knowledge, is this pre-reclamation of these lands? And  
18 by that I mean Roberts Island.

19 MR. ARNOLD: It appears to be based on the  
20 swamp and overflow. Those blue lines there are swamp  
21 and overflow designated areas.

22 MR. HERRICK: Do you have any information with  
23 regards to when if ever portions of Duck Slough may have  
24 been filled in after reclaiming of the lands?

25 MR. ARNOLD: I don't have any knowledge of

1 whether that's the case or not.

2 MR. HERRICK: And I notice on this map that it  
3 also shows Whiskey Slough extending within a few  
4 sections approximately two and a half sections of Middle  
5 River. Do you see that?

6 MR. ARNOLD: Whiskey Slough, is that the  
7 northern -- are you talking about northwestern portion  
8 there?

9 MR. HERRICK: Looking at the map, the word  
10 Roberts Island --

11 MR. ARNOLD: Yeah.

12 MR. HERRICK: -- immediately above the word --

13 MR. ARNOLD: Right.

14 MR. HERRICK: -- I believe, the --

15 MR. ARNOLD: Okay. I see that.

16 MR. HERRICK: Would you agree that that map  
17 shows Whiskey Slough extending down to within two and a  
18 half sections of Middle River?

19 MR. ARNOLD: Within two and a half sections  
20 meaning?

21 MR. HERRICK: Assuming the squares there are  
22 sections.

23 MR. ARNOLD: Yeah. Extending to where it's  
24 designated, yes.

25 MR. HERRICK: And do you have any information

1 with regard to when the southern-most parts of Whiskey  
2 Slough were, if ever, filled in?

3 MR. ARNOLD: No, I don't have that information.

4 MR. HERRICK: And before these lands were  
5 claimed, would you agree that they were a body of water?

6 MR. ARNOLD: Swamp and overflow land, I think  
7 they're designated as.

8 MR. HERRICK: Would you consider that a body of  
9 water with regard --

10 MR. ARNOLD: Yes.

11 MR. HERRICK: -- to --

12 MR. ARNOLD: Yes. During high tides or high  
13 flows.

14 MR. HERRICK: Are you familiar with the -- or  
15 did you hear the testimony of Mr. Mussi in this case  
16 that was provided whenever that was, a month ago?

17 MR. ARNOLD: Yes, I did hear his testimony.

18 MR. HERRICK: And he included a map dated 1914  
19 by him showing lands, including his lands, being farmed  
20 for -- farmed in alfalfa. Do you recall that?

21 MR. ARNOLD: One of his exhibits. Yeah, I do  
22 recall that exhibit, yes.

23 MR. HERRICK: And your testimony in the Cease  
24 and Desist Order seek information between 1911 and 1926,  
25 I believe; is that correct?

1 MR. ARNOLD: '25.

2 MR. HERRICK: '25? Does that map provide you  
3 with additional information with regard to whether or  
4 not there was irrigation on the property?

5 MR. ARNOLD: The map doesn't provide that  
6 information.

7 MR. HERRICK: And are you assuming then that an  
8 alfalfa crop was not irrigated?

9 MR. ARNOLD: No, that's not the assumption.  
10 It's just the map alone was not sufficient evidence to  
11 approve a water right.

12 MR. HERRICK: I'm sorry. Maybe you were being  
13 very technical in your answer.

14 Mr. Mussi's testimony with regard to the  
15 agricultural practices associated with alfalfa in  
16 combination with the map he provided: Does that provide  
17 additional information about whether or not there was  
18 irrigation on the property between 1911 and 1925?

19 MR. ARNOLD: Well, their testimony stands for  
20 themselves. But as to whether it constitutes a water  
21 right, I leave that up to the Board to determine.

22 Our determination was based on just the map  
23 alone we couldn't make a decision.

24 MR. HERRICK: Yes. I'm not being  
25 argumentative. I mean the Prosecution Team was drawing

1 conclusions and presenting them here.

2 I'm asking you if the information provided  
3 changes your position on whether or not sufficient  
4 evidence has been shown.

5 MR. ARNOLD: Well, that would put me in a  
6 position of judging the testimony of Mr. Mussi. I'm not  
7 sure I should take that position here as staff.

8 MR. HERRICK: You may not want to, but that was  
9 the question.

10 MR. ARNOLD: I don't know if that's appropriate  
11 for me. I don't really know. I can't say I can  
12 determine that based on just that one piece of  
13 testimony.

14 MR. HERRICK: And did you hear Mr. Mike  
15 Robinson's testimony also given in this proceeding?

16 MR. ARNOLD: Michael Robinson? I believe so,  
17 yes.

18 MR. HERRICK: And his testimony generally  
19 provided additional information about irrigation of the  
20 lands also prior to 1925; is that correct?

21 MR. ARNOLD: Trying to recollect exactly. I  
22 don't -- I'm not clear on everything he said, but.

23 MR. HERRICK: So I would assume you have the  
24 same answer if I asked you whether or not that  
25 additional information changed your mind about whether

1 or not --

2 MR. ARNOLD: Yeah. I don't recollect exactly  
3 what he said, so I don't --

4 MR. HERRICK: Okay.

5 MR. ARNOLD: -- I can't recall that.

6 MR. HERRICK: Let me check real quickly.

7 That's all I have. Thank you.

8 CO-HEARING OFFICER BAGGETT: Thank you. South  
9 Delta? San Joaquin County?

10 MS. GILLICK: No questions.

11 CO-HEARING OFFICER BAGGETT: Mr. O'Laughlin,  
12 Mr. Rubin?

13 --o0o--

14 CROSS-EXAMINATION BY MR. RUBIN

15 FOR SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

16 --o0o--

17 MR. RUBIN: Good afternoon, gentlemen. My name  
18 is Jon Rubin. I'm an attorney with the San Luis &  
19 Delta-Mendota Water Authority, and I do have some  
20 questions for you.

21 I was hoping to better understand some timing  
22 issues here.

23 I was reading the testimony that you submitted  
24 which has been marked as PT-01, and it seems to me that  
25 you provided some history of this matter under the

1 heading: Are the Mussis Making Unauthorized Diversions  
2 of Water From the Sacramento-San Joaquin Delta. Is that  
3 correct?

4 MR. STRETARS: That's correct.

5 MR. RUBIN: Then you have an -- in that  
6 history, there's no indication or evidentiary support  
7 for any conclusion that the Prosecution Team has drawn  
8 until you get to the heading: Aftermath of the Request  
9 For Hearing. Is that correct?

10 MR. STRETARS: I think a conclusion was drawn.  
11 I don't think we mentioned it.

12 MR. RUBIN: So when was a conclusion drawn by  
13 the Prosecution Team?

14 MR. STRETARS: December 14, 2009.

15 MR. RUBIN: And that conclusion was drawn at  
16 the time when the Division issued a Notice of Draft  
17 Cease and Desist Order?

18 MR. STRETARS: That's correct.

19 MR. RUBIN: And what was the conclusion that  
20 was drawn by the Division on December 14, 2009?

21 MR. STRETARS: At that point in time, we didn't  
22 have sufficient information to conclude that they had a  
23 basis of right to be diverting.

24 MR. RUBIN: Did you make any additional  
25 conclusions? And my questions are to either panel

1 member.

2 MR. ROSE: I think that if you're talking about  
3 any additional conclusions in the Draft Cease and Desist  
4 Order, that document speaks for itself.

5 If you're asking for anything beyond that, I'd  
6 just appreciate if you would be clear as to that point.

7 MR. RUBIN: Is that --

8 MR. ROSE: It wasn't an objection. Just a  
9 clarification in case you were asking one question or  
10 the other.

11 MR. ARNOLD: Not other than conclusions that  
12 the order states.

13 MR. RUBIN: The conclusions were based on a  
14 lack of information provided by the Mussis; is that  
15 correct?

16 MR. STRETARS: That's correct.

17 MR. RUBIN: What information, if any, did the  
18 Mussis provide to the Division on or before December 14,  
19 2009?

20 MR. STRETARS: As you noted initially, after  
21 the February 18th letter, we apparently had the wrong  
22 address so we had to re-mail to them. And there is a  
23 correction in that third paragraph of the second page.

24 For some reason it says February 18th again. I  
25 don't believe that's correct. I just happened to notice

1 that yesterday.

2 MR. RUBIN: Let me ask my question a little bit  
3 different.

4 Under paragraph that says Aftermath of the  
5 Request For Hearing, there's a discussion about evidence  
6 that was submitted on March 5, 2010.

7 MR. STRETARS: That's correct.

8 MR. RUBIN: Did the Mussis provide the Division  
9 any information prior to March 5, 2010?

10 MR. STRETARS: I believe Mr. Arnold indicated  
11 that they submitted a Statement of Water Diversion and  
12 Use in response to our September letter, I believe it  
13 was.

14 MR. RUBIN: Other than the Statement of  
15 Diversion and Use, was anything submitted by the Mussis  
16 prior to March 5th, 2010 that you used to form your  
17 conclusions that are reflected in the Draft Cease and  
18 Desist Order?

19 MR. STRETARS: Not that I am aware of. Not  
20 that we're aware of.

21 MR. RUBIN: Is the Statement of Diversion and  
22 Use marked as an exhibit by the Prosecution Team.

23 MR. STRETARS: I don't believe it is.

24 MR. RUBIN: Did the Statement of Diversion and  
25 Use include anything other than the form? Were there

1 any attachments to the Statement of Diversion and --

2 MR. ARNOLD: Just the two-page form.

3 MR. RUBIN: So the conclusions that are  
4 rendered in the December 14, 2009 Draft Cease and Desist  
5 Order that was noticed on December 14, 2009 are  
6 essentially based upon a lack of information; is that  
7 correct?

8 MR. STRETARS: It's based on our -- the  
9 information we gathered and a lack of information from  
10 the other side.

11 MR. RUBIN: Now on March 5, 2010, you've  
12 testified that the Mussis provided additional evidence  
13 to the Prosecution Team; is that correct?

14 MR. STRETARS: That's correct.

15 MR. RUBIN: Has that additional evidence been  
16 marked as an exhibit by the Prosecution Team?

17 MR. STRETARS: I believe it has.

18 MR. RUBIN: Is the additional information  
19 marked Prosecution Team Exhibit 8?

20 MR. STRETARS: I don't --

21 MR. RUBIN: I don't want to make this longer  
22 than it needs to be.

23 I'm trying to get a better understanding of  
24 what information, additional information, was provided  
25 to the Prosecution Team versus additional information

1 the Prosecution Team may have relied upon after March 5,  
2 2010.

3 MR. STRETARS: The information has been  
4 provided in PT-12.

5 MR. RUBIN: PT-12, is that a March 5, 2010  
6 letter from Mr. John Herrick to Mr. James Kassel?

7 MR. STRETARS: That's correct.

8 MR. RUBIN: Was that the only additional  
9 information that the Mussis provided to the Hearing Team  
10 or the Division on or after March 5, 2010?

11 MR. ARNOLD: There was other information  
12 submitted.

13 MR. RUBIN: What other information was  
14 submitted?

15 MR. ARNOLD: There were some documents, some  
16 maps, Settlement Geography of the Sacramento-San Joaquin  
17 Delta, some references to that. I think some title  
18 deeds. General map information. Some of those that  
19 were displayed today.

20 MR. RUBIN: Did you rely upon anything other  
21 than Prosecution Team Exhibit 12 for purposes of your  
22 written testimony today?

23 MR. ARNOLD: Well, we relied on -- there is  
24 general information that's available in maps and reports  
25 that --

1 MR. RUBIN: Okay.

2 MR. ARNOLD: -- in addition that may have been  
3 relied upon.

4 MR. RUBIN: Was Prosecution Team Exhibit 9  
5 provided to you by the Mussis or a representative of the  
6 Mussis?

7 MR. ARNOLD: No, that was not.

8 MR. RUBIN: Who obtained Prosecution Team  
9 Exhibit 9?

10 MR. ARNOLD: I did.

11 MR. RUBIN: And you indicated earlier that that  
12 was -- that Prosecution Team 9 was obtained from the  
13 Secretary of State's office?

14 MR. ARNOLD: No, that was from the California  
15 State Archives.

16 MR. RUBIN: And if I recall your testimony  
17 correctly, the representative for the California State  
18 Archives indicated that there are a series of  
19 topographic base maps from the period of 1866 to 1877,  
20 and this is one of those maps?

21 MR. ARNOLD: Well, I reviewed the maps. There  
22 are 26 maps of the state. This is one of them that I  
23 recorded.

24 And regarding the date, it's on the -- they  
25 have a database that documents the date. And their

1 database documents 1866 to '77.

2 MR. RUBIN: And does the database indicate that  
3 Exhibit PT-9 is from 1870?

4 MR. ARNOLD: It doesn't say specifically. That  
5 would be -- the more accurate would be '66 to '77.

6 MR. RUBIN: Do you have any sense of whether --

7 MR. ARNOLD: And that's for the whole series of  
8 26 maps.

9 MR. RUBIN: But you don't know when Prosecution  
10 Team 09 may have been prepared?

11 MR. ARNOLD: Between 1866 and '77, I believe.

12 MR. RUBIN: But -- and so you don't know if it  
13 was prepared 1870?

14 MR. ARNOLD: Right. That -- like I said, more  
15 accurately would be '66 to '77 would be more accurate  
16 for that --

17 MR. RUBIN: Thank you.

18 MR. ARNOLD: Series.

19 MR. RUBIN: There is a depiction of a feature  
20 that runs from Burns Cutoff to Middle River; is that  
21 correct?

22 MR. ARNOLD: Yes.

23 MR. RUBIN: And towards the area where the  
24 feature connects to Burns Cutoff, there is a label Duck  
25 Slough, correct?

1 MR. ARNOLD: Yes, I can see that.

2 MR. RUBIN: Is there a label that says Saint  
3 Catherine's?

4 MR. ARNOLD: Yes.

5 MR. RUBIN: Do you know what that depicts, the  
6 reference to St. Catherine's?

7 MR. ARNOLD: I'm not aware of what that means.

8 MR. RUBIN: Okay. And if you look in the  
9 center of the map at the top, there's a label that you  
10 could read part of. It says, as far as I could see,  
11 field. Do you see that? It looks like f-i-e-l-d?

12 MR. ARNOLD: Yes.

13 MR. RUBIN: Do you know what that full label  
14 might be?

15 MR. HERRICK: Mr. Chairman, could I ask that be  
16 pointed out? I'm not following the question.

17 MR. RUBIN: I'll be more specific.

18 MR. HERRICK: Oh, I see.

19 MR. RUBIN: Make sure the record --

20 MR. HERRICK: Thank you.

21 MR. RUBIN: I'm sorry. The witnesses both --  
22 neither know what that might depict?

23 MR. ARNOLD: I could look at the map. Based on  
24 what's cut out here, no, I can't say.

25 MR. RUBIN: Okay. I have a question for either

1 witness. Page 2 of PT-1, under the heading Aftermath of  
2 the Request For Hearing, it states that: These  
3 documents thereafter indicate.

4 Do you see that statement?

5 MR. ARNOLD: Where are we at here? Okay. Yes.

6 MR. STRETARS: Yes.

7 MR. RUBIN: And there's a series of four  
8 bullets; is that correct?

9 MR. ARNOLD: Yes.

10 MR. STRETARS: Yes.

11 MR. RUBIN: Are the bulleted statements  
12 conclusions of the Prosecution Team or are those bullets  
13 intended to reflect your interpretation of the  
14 documents?

15 MR. ARNOLD: It's our interpretation at the  
16 time before the hearings were started and all the  
17 information was put forth based on what we had at the  
18 time.

19 MR. RUBIN: Okay. So you concluded at the time  
20 that you prepared your written testimony that the  
21 property at issue in this matter was currently served  
22 through natural watercourses?

23 MR. ROSE: I would object briefly. Maybe  
24 object is the wrong thing to do, but I believe you're  
25 misreading. It says severed.

1 MR. RUBIN: Oh.

2 MR. ROSE: I don't want to allow my witness to  
3 be confused here.

4 MR. RUBIN: Thank you. I appreciate that.

5 So you believe that the documents indicate that  
6 the property was currently severed from any natural  
7 watercourse?

8 MR. STRETARS: That's correct.

9 MR. RUBIN: And you still hold that belief?

10 MR. ARNOLD: Yes. Well, the natural  
11 watercourse that we're referring to is what was there  
12 prior to the concrete channel that we saw based on the  
13 site visit.

14 So what's remaining is a site -- concrete  
15 channel. So that's not a natural watercourse, and  
16 that's how our determination came to be.

17 MR. RUBIN: So in terms of the first bullet,  
18 it's intended to reflect the fact that there is no  
19 current natural watercourse that abuts the Mussi  
20 property?

21 MR. ARNOLD: That's correct.

22 MR. STRETARS: That's correct.

23 MR. ARNOLD: Yes.

24 MR. RUBIN: And your second bullet indicates  
25 that the documents reflected that the Mussi property was

1 riparian to Duck Slough in 1870?

2 MR. STRETARS: That's correct.

3 MR. ARNOLD: Riparian to a waterway.

4 MR. RUBIN: And you cite to PT-9, is that  
5 correct, to support the second bullet?

6 MR. ARNOLD: Yes.

7 MR. RUBIN: So is it accurate to state based  
8 upon your testimony today that your conclusion today is  
9 that the property was riparian to Duck Slough at some  
10 point between 1866 and 1877?

11 MR. ARNOLD: Riparian to a waterway between  
12 Burns Cutoff and Middle River prior to 1875 when the  
13 swamp and overflow land wasn't reclaimed, which what  
14 appears to be in that map.

15 So like I said, the map ranges -- dates range  
16 from '66 to '77 for the series. And that appears to be  
17 swamp and overflow land, that blue designated lines  
18 there. So that would be prior to reclamation, it  
19 appears.

20 MR. RUBIN: If PT-9 was developed in 1877,  
21 would your opinion change?

22 MR. ARNOLD: PT-9 appears to be swamp and  
23 overflow land on that map, like I said. So that  
24 hypothetical doesn't -- couldn't exist for that map,  
25 but --

1 MR. RUBIN: Let me ask that you assume PT-9 was  
2 prepared in 1877.

3 MR. ARNOLD: Yes.

4 MR. RUBIN: Was Middle Roberts Island reclaimed  
5 prior to 1877?

6 MR. ARNOLD: I think 1875 was the date that  
7 they said that levees went in. But under your scenario,  
8 if it were '77 -- yeah, we couldn't come to the same  
9 conclusion.

10 MR. RUBIN: I have no further questions.

11 CO-HEARING OFFICER BAGGETT: Thank you.

12 Ernie?

13 --o0o--

14 QUESTIONS FROM BOARD STAFF

15 --o0o--

16 WATER RESOURCE CONTROL ENGINEER MONA: This  
17 goes to either Mark or Chuck.

18 During your investigation, did you do any  
19 analysis with regard to season of diversion made on the  
20 Mussi property?

21 MR. ARNOLD: Analysis? Meaning did we --

22 WATER RESOURCE CONTROL ENGINEER MONA: Did you  
23 establish --

24 MR. ARNOLD: Different seasons?

25 WATER RESOURCE CONTROL ENGINEER MONA: Did you

1 establish what the season of diversion was on the  
2 property?

3 MR. STRETARS: Not specifically. We were  
4 looking in a broad general sense trying to determine,  
5 you know, whether the properties had some attachment to  
6 riparian or pre-14 rights.

7 In this case here, we had very limited  
8 information to look at, so we were looking at the maps  
9 we could get our hands on which included the current  
10 assessor's parcels, a couple old ones we were able to  
11 find, the maps you see in PT-9, the USGS maps,  
12 indication from the 1911 map which indicated there was  
13 some type of crop potentially going on there.

14 All of which is an idea of trying to determine  
15 if there in fact existed some basis to irrigate the  
16 property and not necessarily defining what the season  
17 was per se.

18 We know that they irrigate, if they irritate,  
19 typically during a summer season. That was about it.

20 WATER RESOURCE CONTROL ENGINEER MONA: If the  
21 season of diversion was in fact March through September,  
22 do you think that Mr. Mussi would still be able to claim  
23 a riparian right to divert during that season?

24 MR. STRETARS: I would think so, yes.

25 WATER RESOURCE CONTROL ENGINEER MONA: What do

1 you base that conclusion on, given the fact that water's  
2 diverted from Middle River via a pumps facility --

3 MR. ROSE: Can I clarify briefly if you're  
4 talking about hypothetically or if we believe that a  
5 riparian right has been established?

6 WATER RESOURCE CONTROL ENGINEER MONA: Well,  
7 has a riparian right been established? And can a  
8 riparian right continue to be claimed given the fact  
9 that water's being diverted from Middle River and used  
10 during the season of March through September?

11 MR. STRETARS: I think you're kind of putting  
12 us in a situation of trying to do something that's the  
13 reason why we're here before the Board.

14 All I can say is Middle River flowed, and the  
15 unnamed stream that ultimately winds up in Duck Slough  
16 was a distributary of it. So it's a matter of timing on  
17 how that flow came through there or whether it backed up  
18 in there to be able to provide them with the water they  
19 might have been able to irrigate with.

20 I would stop at that point, I think.

21 WATER RESOURCE CONTROL ENGINEER MONA:  
22 Currently, is there any period of time in the year when  
23 the water in Middle River is of such character that it  
24 could not be diverted under a claim of riparian right?

25 MR. STRETARS: For property along Middle River,

1 no. For property that's been removed from it, possibly.

2 WATER RESOURCE CONTROL ENGINEER MONA: Is the  
3 water always natural to the Middle River during all  
4 parts of the year?

5 MR. STRETARS: There is natural flow runoff  
6 throughout a good portion of the year. Late summer, it  
7 becomes questionable.

8 WATER RESOURCE CONTROL ENGINEER MONA: If Mr.  
9 Mussi were to claim that part of his existing diversion  
10 is based on the pre-1914 claim of right by the Woods  
11 Robinson Vasquez diversion point, would you have any  
12 questions with regards to the valid basis of that  
13 pre-1914 right for that particular diversion point?

14 MR. STRETARS: The Woods Vasquez system wasn't  
15 put in till 1925. Part of our concern is the period of  
16 time prior to that, whether there was still a connection  
17 that was maintained to Middle River.

18 If there was, then potentially the pre-1914 or  
19 riparian rights attach to that property. If there  
20 wasn't, it becomes a question of what basis there is.

21 WATER RESOURCE CONTROL ENGINEER MONA: So if  
22 Mr. Mussi were to file a statement claiming riparian  
23 rights, pre-1914 rights, currently, would you consider  
24 those claimed rights valid at this point in time?

25 MR. STRETARS: I think that's why we're here,

1 because we're questioning it.

2 WATER RESOURCE CONTROL ENGINEER MONA: Okay.  
3 Thank you.

4 CO-HEARING OFFICER BAGGETT: I think that's all  
5 the cross. Any recross?

6 MR. ROSE: I don't have any redirect for my  
7 witnesses.

8 CO-HEARING OFFICER BAGGETT: Okay. Redirect,  
9 I'm sorry. Okay. Exhibits?

10 MR. ROSE: Yes, I'd like to move all our  
11 exhibits in at this time, and that would include  
12 exhibits -- let me just find the numbers here. Exhibits  
13 PT-15 and PT-16 which are the maps I had previously  
14 offered separately for the Pak/Young hearing, 1941 Woods  
15 maps that are clearer versions, and PT-16 which is an  
16 enlarged version.

17 CO-HEARING OFFICER BAGGETT: Any objection? If  
18 not, they're admitted.

19 (Whereupon Exhibits PT-15 and PT-16 were  
20 admitted in evidence.)

21 CO-HEARING OFFICER BAGGETT: Thank you.

22 So Mr. Herrick, do you have any other witnesses  
23 in the Mussi matter? I think we've concluded all yours.

24 MR. HERRICK: Mr. Chairman, I believe we've put  
25 on all the witnesses for both Pak/Young and Mussi.

1 CO-HEARING OFFICER BAGGETT: In caution, I've  
2 just got to be -- there have been multiple days on this.

3 CO-HEARING OFFICER BAGGETT: Mr. Rubin, do you  
4 have any other -- Mr. Wee?

5 MR. RUBIN: Ms. Kincaid will be providing  
6 direct -- or soliciting direct testimony from Mr. Wee on  
7 behalf of the San Luis & Delta-Mendota Water Authority,  
8 State Water Contractors, and Modesto Irrigation  
9 District.

10 CO-HEARING OFFICER BAGGETT: Okay. We'll do  
11 direct, and then we'll see what the cross looks like,  
12 decide whether to take a break.

13 MS. KINCAID: Valerie Kincaid, San Luis &  
14 Delta-Mendota Water Authority.

15 Similar to the Pak matter, we'll have Mr. Wee.  
16 We will not have Mr. Johnson or Mr. Goldhamer.

17 --o0o--

18 STEPHEN R. WEE

19 Called by SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

20 DIRECT EXAMINATION BY MS. KINCAID

21 --o0o--

22 MS. KINCAID: Mr. Wee, have you previously  
23 taken the oath in this matter?

24 MR. WEE: I have.

25 MS. KINCAID: Is MSS-1A a true and correct copy

1 of your statement and qualifications?

2 MR. WEE: It is.

3 MS. KINCAID: And is MSS-1 a true and correct  
4 copy of your testimony in this matter?

5 MR. WEE: Yes, it is.

6 MS. KINCAID: That's all we have on direct.

7 CO-HEARING OFFICER BAGGETT: Thank you.

8 MR. ROSE: No cross of Mr. Wee.

9 CO-HEARING OFFICER BAGGETT: Mr. Herrick, do  
10 you have cross? Short?

11 MR. HERRICK: Extremely short.

12 CO-HEARING OFFICER BAGGETT: Okay.

13 MR. HERRICK: I would just have my cross from  
14 the Pak/Young act for this since it's virtually the same  
15 with one question.

16 CO-HEARING OFFICER BAGGETT: Very good.

17 --o0o--

18 CROSS-EXAMINATION BY MR. HERRICK

19 FOR RUDY MUSSI, TONI MUSSI

20 AND LORY C. MUSSI INVESTMENT LP

21 --o0o--

22 MR. HERRICK: Mr. Wee, before the property in  
23 question was reclaimed, would you consider it as being a  
24 body of water or part of a body of water?

25 MR. WEE: No.

1 MR. HERRICK: Okay.

2 That's all I have. Thank you.

3 MS. KINCAID: With that, we'd like to --

4 CO-HEARING OFFICER BAGGETT: Well, let's -- any  
5 other cross?

6 MR. RUIZ: No cross for South Delta.

7 CO-HEARING OFFICER BAGGETT: San Joaquin?

8 MS. KINCAID: We have no redirect --

9 CO-HEARING OFFICER BAGGETT: Any questions of  
10 staff? Okay, now.

11 MS. KINCAID: Now, we don't have any redirect.  
12 We would also like to move MSS-1, 1A through I,  
13 and 2A through D into evidence.

14 CO-HEARING OFFICER BAGGETT: Any objection? If  
15 not, they're admitted. Thank you.

16 MS. KINCAID: Thank you.

17 (Whereupon Exhibits MSS-1, 1A through I,  
18 and 2A through D were accepted in  
19 evidence.)

20 CO-HEARING OFFICER BAGGETT: So that's it. We  
21 can -- no other issues in the cases-in-chief. We have  
22 rebuttal testimony. We can go off the record.

23 (Discussion off the record)

24 CO-HEARING OFFICER BAGGETT: Back on the  
25 record.

1           9 o'clock Thursday the 15th of July. Same  
2 place, Coastal Hearing Room. Okay. See you then.

3           MR. HERRICK: Mr. Chairman, I have one last  
4 procedural thing.

5           There are two pending matters in the Dunkel  
6 case. I was wondering when or if you want to argue  
7 those or discuss them in the open hearing.

8           There's a motion for directed verdict and a  
9 motion to reopen.

10          CO-HEARING OFFICER BAGGETT: I think we will  
11 make a -- we'll send out a notice after the 16th and at  
12 that point determine -- conclude this, then come back  
13 and finish that up.

14          MR. HERRICK: Mr. Chairman, that would seem to  
15 suggest that motion to reopen will be denied if it's not  
16 going to be considered until all the hearings are  
17 closed.

18          CO-HEARING OFFICER BAGGETT: Well, this  
19 hearing's not closed.

20          MR. HERRICK: We expect it to be closed on the  
21 16th at the latest.

22          CO-HEARING OFFICER BAGGETT: Right.

23          MR. HERRICK: I thought you said you would  
24 issue a ruling after that.

25          CO-HEARING OFFICER BAGGETT: I don't -- we can

1 schedule more hearings. Just because -- I don't think  
2 that's necessarily the case at all. We have to reopen  
3 that at some point. I think we said we would.

4 MR. HERRICK: Thank you.

5 CO-HEARING OFFICER BAGGETT: Okay. See you  
6 next week.

7 \* \* \*

8 (Thereupon the WATER RESOURCES CONTROL  
9 BOARD hearing adjourned at 2:10 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of California,  
8 and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or  
10 attorney for any of the parties to said meeting nor in  
11 any way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this July 26, 2010.

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\_\_\_\_\_  
LINDA KAY RIGEL, CSR  
Certified Shorthand Reporter  
License No. 13196

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